Reports of
Ontario Municipal Board

DECISIONS

1960

Combining:
1st, 2nd, Quarters

ONTARIO

Published by
The Department of Municipal Affairs
801 Bay Street, Toronto
Ontario

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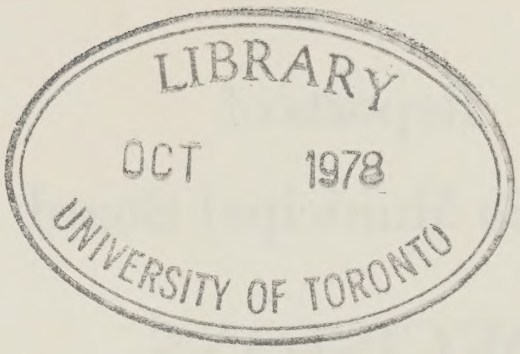

Foreword

As a service to the legal profession, to municipalities and to planning boards the Department of Municipal Affairs early in 1959 published a booklet containing twenty-three representative decisions of the Ontario Municipal Board for the year 1958.

This initial effort was so well received that a year later another booklet was published containing over fifty such decisions.

It had been expected that the 1960 decisions might be published quarter by quarter. However, this proved to be impracticable, so decisions selected from those issued in the first and second quarters of the year have been combined in this present volume. It is expected that a selection of decisions issued in the third and fourth quarters will follow shortly.

TWIN PORT DEVELOPMENTS LIMITED v. THE CITY OF PORT ARTHUR and E. BLUNDELL, ASSESSMENT COMMISSIONER OF PORT ARTHUR and TWIN PORT DEVELOPMENTS LIMITED

*January 5th, 1960. P.F.M. 8905, 8911

Assessment—Appeal from decision of County Judge—Re-assessment of city on basis of Department of Municipal Affairs Manual — Sharp increase comparable throughout area. Sec. 80, The Assessment Act (R.S.O. 1950, c. 24) as amended.

I. GOLDSMITH, and J. L. JASKULA, for the appellant.
J. F. W. ROSS, Q.C., J. GABLE, for the respondent.

This was an appeal by the Twin Port Developments Limited and a cross appeal by E. Blundell, Assessment Commissioner for the City of Port Arthur from the decision of His Honour Judge A. H. Dowler, Judge of the District Court of Thunder Bay, setting the assessment of the buildings of the appellant known and described as 200½-02½ Arthur; 2-16 North Cumberland in the City of Port Arthur, Roll No. 1-253 F 28, at $95,395.00.

Solicitors for both appellants agreed to both appeals being heard together.

In 1958 the City of Port Arthur made a re-assessment of the whole city using the Department of Municipal Affairs Manual as a guide. As a result the assessment on these buildings was increased from $38,800 to $105,995. The Court of Revision reduced this to $95,395. This amount was confirmed by Judge Dowler.

In 1946 these buildings had been purchased for $120,000 and in 1947 had been sold to Twin Port Developments Limited for $144,000. Changes in tenants, it was claimed, had made repairs and maintenance costly in 1957 and 1958. Estimates for replacement today varied from $235,440 to $247,000.

For 1958 the net income on the building appeared to have been $13,116.85. A local real estate broker in Fort William, collecting the rents on these buildings, estimated the value of the property after deducting 65% for depreciation as $85,000. He claimed also that assessments on commercial property were considerably higher in percentage of assessed value to sale value than residential property. He called attention to three commercial properties whose

*Present, C. F. Nunn, Esq., and David Jamieson, Esq.

sale prices were less than the assessed value. He admitted however that assessments in the business section were very comparable.

In the re-assessment, using the Manual of the Department of Municipal Affairs as a guide throughout, the assessor had used Class 34-D and applied a rate of $2.00 per sq. ft. for the main building and $1.00 per sq. ft. for part of the basement. After adding for plumbing, wiring and heating and using other factors in the manual, he had reached a figure of $105,995. He still felt this assessment to be correct.

The board noted the following points, viz:

1. The contractors who estimated a replacement cost of $240,000 did not attempt to estimate the present day value.
2. The real estate broker who valued the buildings at $85,000 after 65% depreciation used a figure of 1½% per annum, which appears excessive considering the cost of repairs, etc., in 1956-1958.
3. Net income from the building after all possible deductions still produced excellent return on present assessed value.
4. The real estate broker had admitted that assessments in the commercial area were very comparable.

Therefore the assessments of Judge Dowler of $95,395.00 was sustained.

Both appeals dismissed.

LEONARD V. WILTON AND THE TOWN OF PORT DALHOUSIE v. SIDNEY BROOKSON

*January 7th, 1960. P.F.M. 7235, 7243

Assessment — Appeal from decision of County Judge — Amusement park lands and buildings—Seasonal use important factor—Difficult to compare with town lands. Sec. 80, The Assessment Act (R.S.O. 1950, c. 24) as amended.

DONALD RODGERS, for the County of Lincoln.

M. SEYMOUR, Q.C., for the Town of Port Dalhousie.

H. P. CAVERS, for the respondent.

This covered separate appeals by the County of Lincoln and the Town of Port Dalhousie from the decision of His Honour, Judge T. J. Darby, Judge of the County Court of the County of

*Present, W. Greenwood, Esq., B.Sc., and A. L. McCrae, Esq.

Lincoln, dated March 21, 1958 with respect to the assessment made in 1957 for taxation in 1958 relative to the property known and described as Lakeside Park in the Town of Port Dalhousie. With consent of all parties these appeals were heard together.

The property is unusual in being solely an amusement area of some 12 acres leased by the respondent from the Crown, having a beach, dance hall, refreshment booths, etc., in use only in the summer season. It is triangular in shape roughly 1,000 ft. to the side—one side a beach, one side parallel to the harbour and about 20 ft. therefrom and the third abutting the developed part of the town and connected thereto by 2 street allowances, one of which is unopened. Additional access is provided by 2 lots owned by the respondent. On the land are some 56 structures all owned by the respondent. The lease restricts the land to this sort of use.

The town assessor assessed the property as: Land—$6,000; Buildings—$69,000; Total $75,000 with a business assessment of 25%. Court of Revision had confirmed this. However His Honour Judge Darby had altered this to: Land—$12,000; Buildings—$24,500; Total—$36,500 with a variable rate for business assessment.

Appellants called on the county assessor Mr. Wilton, who would have assessed for: Land—$45,480; Buildings—$55,185; Total —$100,665.

Regarding the land, Mr. Wilton divided it into three areas, viz.—1. Beach, 2. Harbour, 3. Sports field and parking area. On the first he placed a rate of $25 per ft. frontage (depth 200 ft.) being the average of rates then assessed on serviced areas in town for lots 100 ft. deep. The harbour frontage he would assess at $15 per ft. (depth 200 ft.) and the third area at $1,750 per acre. This produced amounts respectively of $27,426, $12,720, and $5,337; total for land of $45,483, or an average of $3,790 per acre for the 12 acres.

Mr. Wilton made certain calculations to reduce to acreage rates the current assessed values in the serviced area of the town for both commercial and residential properties. Thus he found the former ranged from $8,700 to $15,250 and the latter from $3,484 to $4,356. These were then compared with the calculated average for the subject lands.

The board did not attach too much weight to this comparison. Firstly it neglected entirely the acreage of the streets in the serviced areas and this alone would reduce the calculated values by about one-third. Secondly, it neglected the value of the services which are

on the street and these can amount to a very substantial sum. Thirdly, it neglected the factor of location which would weigh very heavily in favour of commercial properties in the business centre. In fact the board did not feel that there was any other land in town properly comparable with the subject land.

Two experienced realtors were called by the respondent. One estimated the value of the subject lands at $1,000 per acre or a total of $12,000. The other estimated $12,842 but pointed out that the rental of $960 paid under the lease gave a value of $19,200 when capitalized at 5% per annum.

Mr. Wilton claimed that the $1,000 per acre set by his honour would apply only to lands across the harbour, isolated from the main town area. The board accordingly considered that the proper assessment of the subject land lay between $1,000 per acre and the average of $3,790 previously mentioned. The board believed that under the unusual circumstances, a fair assessment for the subject land was $1,600 per acre or a total for land of $19,200.

Dealing with the buildings Mr. Wilton had followed the Manual of The Department of Municipal Affairs—the same as used in the town. Correcting for the 1940 values found there by considering them as 35% of today's replacement costs and taking into account the rental factor he arrived at a final assessment value for buildings of $55,185.

The two realtors previously called had estimated replacement costs for the buildings at $120,775.71 and at $118,986.73. The board felt the lower figure (by Mr. Hawreliak) to be the more accurate and so, using Mr. Wilton's 35% and taking 35%of $118,986, the round figure of $41,650 was reached.

The board therefore directed that the realty assessment be: Land—12 ac. at $1,600 per acre—$19,200; Buildings—$41,650; Total $60,850.

There remained then only the question of the business assessment. The board accepted Mr. Wilton's evidence as to the buildings and associated areas to be excluded from business tax, viz: summer cottages, restaurant, loading shed, freight shed, having a total area of 0.424 ac. at $1,600 per acre this would be a round $700.

Regarding the buildings the board found it impossible to tell from the exhibits just which numbers applied so it directed that 35% of the replacement costs as given by Hawreliak in column 5 of

Exhibit 9 be the amount of building assessment on which no business tax should apply. The sum of this amount and $700 for land was to be deducted from the realty assessment of $60,850. Business assessment was to apply on the remainder at a rate of 25%.

Appeal allowed.

SHERIDAN NURSERIES LIMITED v. HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO

*January 8th, 1960. P.F.M. 8506

Compensation—Easement over nursery lands—Temporary occupation and compensation on rental basis—Section 32 of The Power Commission Act (R.S.O. 1950, c. 281), as amended.

J. D. PICKUP, Q.C., J. L. Ross, for the claimant.
W. E. RANEY, for the respondent.

This was an appeal from an award of Mr. Harry W. Cooke, valuator, dated February 16, 1959 in respect to compensation for land taken or used and damage done to land and property in part of Lot 6, Con. 3, S.D.S., Township of Trafalgar, County of Halton. The appellant's lands had a width, east to west, of about 700 ft. and a length of about 4,000 feet. While this amounted to over 64 acres the land covered by the easement would amount to only about 3 acres.

Apparently, following some conversations between representatives of the parties, the respondent entered upon these lands and constructed near the easterly limit a single pole power transmission line. Subsequently by letter dated May 5, 1953 the Hydro requested a grant of easement over a 33 foot wide strip of land for the full length of the property and mentioning compensation of $550. This easement had not been granted. The formal Grant of Easement had provided for the relocation of the line, should it prove to interfere with the development of the property.

A letter of November 27, 1958 enclosed a Memorandum of Agreement and Agreement and referred to copy of Grant of Easement left with the appellant two days earlier. The formal Grant of Easement and accompanying documents were never signed by the

*Present, W. Greenwood, Esq., B.Sc., and D. Jamieson, Esq.

appellant but the respondent had remained in possession pursuant to Section 32 of the Act. The question of compensation was finally referred to Mr. Harry W. Cooke, valuator, whose award allowed $815 including interest from the date of occupation.

Appellant claimed possible bad effects of the pole line on a proposed subdivision. However appellant also stated that the highest and best use of the land in 1953 was for the then existing and present use, namely as a nursery. While it had been already indicated that the area would become a residential one, such development was accelerated only after the construction of the Ford plant. According to R. L. Heal the value in May 1953 was $3,500 per acre which had increased to $5,000 or $5,500 per acre at the date of the hearing. He believed that if the easement was temporary, compensation should be on a rental basis with the proper rental being 5% of the value of $3,500 or, considering 3 acres, amounting to $525 per annum—or $825 if based on 1960 values.

Another witness valued the land in 1956 at $4,500 per acre.

Under the circumstances the board felt that the forcible taking must be regarded as a temporary one and the compensation should be on a rental basis. It appeared clear that the pole line interfered only very slightly with the present use of the property and the board could not base the rental value on the full value of the land. The average value of the land from the date of entry to the date of hearing appeared to be about $4,500 or a total of $13,500 for the 3 acres.

The board would accordingly direct that compensation be calculated on this basis from May 1, 1953 to Dec. 31, 1959, plus simple interest at 6% calculated on the basis that the rental become due at the end of each calendar year. To this amount should be added the agreed sum of $60 for damages during construction plus similar interest thereon. The board further directed that commencing in 1960 and continuing until such time as the temporary possession of the respondent ceases, the annual rental should be $400 and fall due on the 1st day of December. It further directed that the appellant or respondent might at any future time, while the respondent remains in possession, make application to the board for a review and reappraisal of the rental to be paid.

Re SORIE LIBBY ROSENBLATT AND THE CITY OF HAMILTON

*January 11th, 1960. P.F.M. 9284

Planning — Appeal from committee of adjustment — Minor variance from zoning by-law—General intent and purpose of official plan—Onus on appellant to prove need. Sec. 18, The Planning Act, 1955 (O.S. 1955, c. 61).

E. A. Goodman, Q.C., for the appellant.

K. Martin, for C. Ferguson, opposing.

J. B. Chambers, Q.C., for the City of Hamilton.

This was an appeal by Sorie Libby Rosenblatt from a decision of the committee of adjustment of the City of Hamilton with respect to her application for variance from the provisions of By-law 6593, to permit widening of the garage on property known as 151 Sterling Street.

The committee had considered that the proposed variance was not desirable for the appropriate development of the land and building and therefore not consistent with the general intent and purpose of the By-law and of the Official Plan as referred to in Sec. 18(1) of *The Planning Act.*

The subject home was built before the city's zoning by-law. It had an attached garage with a room above at the easterly end of the building. The appellant stated that her present single-car garage was not wide enough for late model cars and anyway she wanted accommodation for two cars.

The property was in a "C" use zone according to the subject by-law and so there must be provided and maintained (a) front yard at least 20 ft. deep (b) side yard along each side lot line at least 4 ft. wide (c) rear yard at least 25 ft. deep.

The proposed addition did not encroach on the required front and rear yards but reduced the required side yard from 4 ft. to 2 ft. 2 in.

Appellant claimed the addition to this house would benefit the premises and the area. Other houses in the neighborhood had side yards of less than 4 ft. A suggestion was made that the garage be erected at the westerly end of the building. However it was argued that that site was on the edge of a steep ravine. Construction there

*Present, C. F. Nunn, Esq., and David Jamieson, Esq.

would destroy a very attractive view and would cost $18,000 against $3,500 to $4,000 if on the east side.

The owner immediately to the east claimed his property would be seriously depreciated in value and the view from one window interfered with. He suggested a garage on the west side. He also would like to build nearer the lot line.

The City maintained that if the appeal was granted the intent and purpose of the official plan and the zoning by-law would not be maintained. The appellant had 3 alternatives, viz: (a) build in the rear yard (b) build in compliance with the By-law or (c) build at the west end of the dwelling. Only if the appellant could not do any of these things should the appeal be granted.

The Board, while noting that other nearby houses had side yards of less than 4 ft. and that other owners would like to build closer to the lot line, considered the appellant in the same situation as others in that part of the city. A substantial addition could still have been constructed in the chosen location and still comply with the by-law. The board did not feel that the appellant had discharged the onus which was upon her to show the need for the minor variance requested.

Appeal not allowed.

Re ETHEL MAUD MOYER AND THE CITY OF BRANTFORD

*January 15th, 1960. P.F.M. 9676

Planning—Appeal from committee of adjustment—Extension of facilities for non-conforming use not justified. Sec. 18 The Planning Act, 1955, (O.S. 1955, c. 61), as amended.

R. N. Waterous, counsel for the appellant.

S. E. Wyatt, Q.C., counsel for interested parties supporting the appeal.

G. Houlding, counsel for residents of the area opposing the appeal.

John W. Legge, secretary-treasurer of the City of Brantford committee of adjustment.

This was an appeal of Ethel Maud Moyer from a decision of the Committee of Adjustment of the City of Brantford with respect to her application for a variance from the provisions of By-law 3649,

*Present, D. Jamieson, Esq., V. S. Milburn, Esq.

as amended, as applied to part of Lot 2 Block A, according to a plan by Thomas Cheeseman, and known as 166 Eagle Avenue, to permit erection of a canopy or roof of fireproof material on a steel frame to cover completely an existing concrete dock at the rear of the building thereon which was used as a heating sales and service depot.

Apparently that section of Eagle Avenue in which the subject property was located was almost entirely residential. The building on the subject property was formerly a residence. The purpose of the canopy was largely to prevent bottles or cylinders used for the storage of propane gas from becoming frozen in ice and snow which collected on the exposed platform and thus causing considerable inconvenience to the appellant.

Opponents claimed that the business was not lawfully established as by-laws had been in existence since 1931 placing the subject lands in a residential classification. This business first began in this part of Brantford at 164 Eagle Avenue in 1946. In 1951 it began using the subject property, 166 Eagle Avenue. It was claimed to be a nuisance in several respects.

The Board considered that this business did not come within the provisions of Sec. 18(2)(a) of *The Planning Act* and that the granting of the appeal would not maintain the general intent and purpose of the zoning by-law and official plan of the City of Brantford.

Appeal not allowed.

Re THE COLLINGWOOD DISTRICT COLLEGIATE INSTITUTE BOARD

*January 21st, 1960. P.F.M. 8334

High School Board—Apportionment of liability among constituent municipalities—Use of the factors authorized by law. Sec. 33, The Secondary Schools and Boards of Education Act, 1954 (c. 87).

H. E. Manning, Q.C., for Village of Wasaga Beach.
J. D. Taylor, for Town of Collingwood.

This was a reference by The Collingwood District Collegiate Institute Board of the objections of the Village of Wasaga Beach, Town of Collingwood, Town of Stayner and Township of Sunni-

*Present, J. A. Kennedy, Q.C., Vice-Chairman, and D. Jamieson, Esq.

dale to the decision of the Board of Arbitrators made under s. 33 of *The Secondary Schools and Boards of Education Act, 1954,* dated the 19th day of December, 1958, which was concerned with the proportion of liability which each municipality within the high school district should bear.

A preliminary objection was made at the opening of the hearing to the effect that these proceedings were not properly constituted because the high school district here in question formed part of three counties, while section 33 refers only to those in which the components form part of a single county.

As this was a question of law the board had to consider whether or not it had the power to decide it. The board was of the opinion that it had jurisdiction to decide this question, based on the judgment of the Court of Appeal in *The London Railway Commission et al* v. *The Village of Port Stanley,* 1954, O.R. p. 487. At page 491 reference is made to the board and also further: ". . . any administrative body given power to grant the relief provided for . . . would have to decide whether the applicant seeking relief . . . comes within the purview of the section as being a person entitled to apply for relief, even if that involved determining a question of law."

The machinery for a review by the board in the present case was for a purpose very similar to that of an appeal to the board under section 97 of *The Assessment Act* which was in question before the Court of Appeal in the case of *Re The Town of Copper Cliff, The Town of Frood Mine, et al,* 1957 O.W.N., p. 411. The judgment of Aylesworth, J.A. at p. 416 appeared to have a bearing on the question:

> "I think the purpose, intent and scheme of the legislation and in particular the provisions of s. 97 of The Assessment Act, as amended, envisage the board, sitting in appeal, dealing with the Report at large and determining all questions of fact and law raised in and relevant to the appeal."

The board then dealt with the objections to the award. The award to be based on a formula involving equalized assessment, population, and student enrolment. The board found that the circumstances of the case did not warrant introduction of the additional factors used in the formula nor warrant application of any of the other factors enumerated in subsection (12) of the Act. A division of liability based on equalized assessments did not seem to impose an undue burden on any one group. The board found

that the decision of the arbitrators should be varied and based on equalized assessment, the division of liability should be:

Township of Collingwood	37.78%
Town of Stayner	6.77
Village of Creemore	3.48
Village of Wasaga	8.61
Township of Nottawasaga	27.45
Township of Sunnidale	14.34
Township of Collingwood	.58
Township of Osprey	.55
Township of Mulmur	.44

Appeal allowed.

Re LUIGI CURATOLO AND THE CITY OF TORONTO

*January 22nd, 1960. P.F.M. 5021

Planning—Appeal from Committee of Adjustment—Minor variances—"similar" use not necessarily "identical" use. Sec. 18(2) (a)(ii), The Planning Act, 1955 (O.S. 1955, c. 61).

Norman D. Scott, counsel for the appellant.

C. Taylor, assistant secretary-treasurer of the Committee of Adjustment of the City of Toronto.

This was an appeal of Luigi Curatolo, from a decision of the Committee of Adjustment of the City of Toronto with respect to an application of the said Luigi Curatolo for variance from the provisions of By-law 18642 as applied to a portion of Lot No. 1, Reg. Plan 323 known as 2A Clinton Street to permit conversion of the rear portion of the said property into a shoe repair shop.

The ground floor of the subject building had been used for commercial purposes for many years. With the passing of the restricted area by-law the commercial uses became non-conforming, as the building was then in a residential use zone.

A rearrangement of the commercial space was made and the appellant's shoe repairing shop was to be moved to another location on the same floor of the same premises, formerly used as a garage.

The Committee of Adjustment refused to sanction this, stating

*Present, David Jamieson, Esq., and V. S. Milburn, Esq.

that "this application is not reasonable and does not come within the meaning of a minor variance."

The board was of the opinion that this was a matter which came within the provisions of Sec. 18(2) (a)(ii) of *The Planning Act* in that the use of this floor space was similar to the purpose for which it was used on the day the by-law was passed.

Appeal allowed.

RE BRAMPTON ANNEXATION

*January 26th, 1960. P.F.M. 9393

Annexation—Township lands to town—Influence of metropolitan Toronto—Doubt as to water supply—Effect of township's plan for adjoining areas—Various minor considerations—Sec. 14 of The Municipal Act (R.S.O. 1950, c. 243), as amended.

WILBERT E. WEST, Q.C., for the Town of Brampton.

J. M. BEATTY, for the Township of Chinguacousy.

E. A. GOODMAN, Q.C., LIONEL SCHIPPER, for certain land owners concerned.

W. G. DINGWALL, for J. & B. Bull—owners of land concerned.

J. T. WEIR, Q.C., WILLIAM LAWRENCE, for Wingold Construction Co. Ltd.

WILLIAM D. MACKIE, for F. Kupsob & Sons Limited.

G. D. LANE, for Madoc Building Construction Ltd.

D. R. STEELE, for Bramalea Construction and Development Limited.

J. A. TAYLOR, for James Fleury and others—owners of land concerned.

G. A. GRAHAM, for A. P. & Crystal Wade—owners of land concerned.

D. R. FEATHERSTONE, for certain land owners concerned.

This was an application by the Town of Brampton for the annexation to the Town out of the Township of Chinguacousy of some 3,200 acres of land situate about one-half to the north and one-half to the south of the present Town limits.

Opposed were the Township and eleven owners of tracts varying from 50 to 100 acres within the subject area. On the other hand were owners desirous of having their lands included also.

The Town claimed that its population should be about 48,000

*Present, J. A. Kennedy, Q.C., Vice-Chairman and C. F. Nunn, Esq.

in the next 20 years and that the area sought would be required for such a population. It claimed that it could service this area for water and sewers. With wells as a source of water supply, tests made so far had not been sufficiently extensive to firmly substantiate the consulting engineer's opinion.

Mr. Bousfield, professional planner, believed that the rate of growth in Brampton would continue to increase because of the influence of Metropolitan Toronto. This the board doubted because of a new departure taken by the Township about a year ago. This was in amending the Township's Official Plan whereby an area rather larger than the present Town of Brampton was proposed for residential, commercial and industrial development in stages. It included an area called "Bramalea Development" abutting the present limits of the Town on the east and an area occupied in part by what is known as the "Irmac Development" to the north of the Town. This amended plan provided for a development of some 4,000 houses in one small area representing probably a population of over 12,000.

It was very difficult to estimate the effect, on the future development of Brampton, of urban development in the Township, where it appeared that a programme would be carried out by a single owner in the Bramalea area and where taxes would likely be lower than in the Town. Further the Town and the Township had engaged in a joint sewage disposal project and both were relying on the same sources for underground water supplies. The engineering evidence indicated the maximum capacity for sewage disposal under the present plan would not serve a population of more than 60,000. Also the known quantity of water supply had not been actually determined. Other mutual problems would certainly arise.

On all the evidence of anticipated growth it was very doubtful that available water supply and any possible extension of sewage disposal facilities would prove adequate even for a period much less than the 20 years for which the Town was planning. The problem of divided municipal jurisdiction over what must develop as two contiguous urban areas, if not indeed a single one, required very careful and early study.

It appeared clear that the pressure for development in Brampton and vicinity, and indeed in other areas, was caused largely by the proximity of Metropolitan Toronto. In view of this it appeared

that the time had come to consider the need to enlarge the Metropolitan Toronto Planning Area to embrace the Town of Brampton and vicinity as well as other localities under similar pressure.

An unusual situation developed during the second day of the hearing. It was believed that a large but unnamed industrial development could be secured on lands which it was proposed to annex if the promoters could be assured immediately that the annexation would take place. In view of this urgency a short adjournment was arranged to permit the Town and the Township to agree on specific areas and thereby reduce the time of argument. Accordingly these two parties agreed that the areas asked for by the Town should be annexed with the exception of (a) Lots 9 and 10, Con. I and II west of Hurontario Street (b) east half of Lot 8, Con. II, east of Hurontario Street and (c) east half of Lots 1 and 2, Con. II east of Hurontario Street.

Seeking annexation of lands not in the original proposal was the Wingold Construction Company. After some hesitation the Town finally agreed, providing it was not to be considered as able or ready to provide services required for their development. Also seeking annexation was F. Kupsob and Sons Limited, owners of part of the west half of Lot 2, Con. 2, west of Hurontario Street. It wished to move its operation of demolition, scrap, etc. from its present location well within the Town to one near the limits. The Town was in favour but the Township was opposed on the grounds that operations of this nature were prohibited in the Township and the proposed arrangement would result in this operation being conducted in an area bordering on the Township on three sides. Request refused.

Owners of parts of Lots 9 and 10, Con. 1 east of Hurontario Street were also anxious to be taken into the Town and pointed out that services were readily available. The board felt that due to the uncertainties of growth in the near future, the north limit of the Town should remain for the present, along the north limit of Lot 8.

Representations against annexation were made on behalf of owners of certain farms within the proposed area. The board felt that these objections were not sufficient to override the need and the public benefit that should accrue from the annexation. Other owners asked that their respective lands be included in the annex-

ation or left out. The board decided that no effect should be given to these requests.

The board finally decided that there should be annexed out of the Township of Chinguacousy to the Town of Brampton the lands sought by the Town of Brampton as set out in Schedule "A" of the original decision, with the exception of those lands contained in

> Lots 9 and 10, Concessions I and II,
> West of Hurontario Street; the
> East Half of Lot 8, Concession II
> East of Hurontario Street and the
> East Half of Lots 1 and 2 in
> Concession II East of Hurontario Street.

In addition, the West Half of Lot 6 in Concession II west of Hurontario Street. The annexation should take effect on the 1st day of March, 1960.

Application granted in part.

Re THE TOWNSHIP OF NORTH YORK

*January 26th, 1960. P.F.M. 9296, 8859, 8858

Planning and Restricted Areas—Approval of amendment to official plan and of by-laws—By-laws inconsistent with official plan invalid—Amendment to official plan after purchase in good faith. Sec. 29 The Planning Act, 1955.

W. S. Rogers, for the Township of North York.
V. M. Singer, for the owners of the lands in question.

These were applications by the Township of North York for approval of two by-laws amending restricted area by-laws and for the approval of a proposed amendment to the official plan of the township. These were all concerned with the same lands and were for the purpose of changing the permitted use from commercial to single family residential. The two by-laws were passed some two months before the adoption of the proposed official plan amendment, so it would appear that when passed, these by-laws were not in conformity with the official plan. The board therefore decided that they were invalid and dismissed the application for approval thereof, thus leaving the application for approval of the proposed

*Present, J. A. Kennedy, Q.C., Vice-Chairman and A. L. McCrae, Esq.

amendment to the official plan to be decided on its merits.

The lands in question had a frontage of 427 ft. on the north side of Glen Park Avenue extending from a point 125 ft. west of Dufferin Street to a point 33 ft. east of Ennerdale, the next intersecting street. For a number of years the lands adjacent to the parcel in question and facing on Dufferin Street had been designated on the official plan for commercial use and zoned accordingly. Up until July 1956 the permitted use of the subject land had been residential. It was then changed to commercial, by appropriate official plan amendment and by-laws all duly approved, to permit the establishment of a new car dealership by Somerville Motors Limited but this did not materialize. However the newly permitted use was allowed to continue as commercial.

In November 1958 the subject land was purchased by a Mr. Freedman who checked on the zoning by examining the official maps and by making a search at the registry office, from which he found the permitted use to be commercial, known as C1. Mr. Freedman then sought building permits for multiple family dwellings a use permitted under existing zoning. It appeared that the ensuing negotiations consisted chiefly in stipulations as to the amounts to be paid to the township for installation of necessary services. When these stipulations had mounted from $13,000 to almost $27,000 the negotiations ceased. After this the township passed the two by-laws referred to earlier and subsequently adopted the proposed amendment to the official plan.

There may have been some question about the wisdom of the original change made in the zoning in 1956 in anticipation of the motor car agency deal but this permitted use was allowed to remain unchanged after it had failed to materialize. Meanwhile innocent purchasers acquired rights in the land relying on the existing zoning, as they were entitled to do. In view of this the board did not think it proper to then approve the change in the amendment to the official plan sought.

Application dismissed.

JACOB DRIESMAN v. ONTARIO NATURAL GAS STORAGE AND PIPE LINES LIMITED

*January 29th, 1960. P.F.M. 8749

Procedure—Appeal from arbitration award—impropriety of unsigned award—Appeal period based on proper award. Sec. 5, The Pipe Lines Act, 1958 (O.S. 1958 c. 78).

J. W. CRAM, for the appellant.

L. G. O'CONNOR, Q.C., for the respondent.

This was an appeal under the provisions of *The Pipe Lines Act, 1958* from an award of the Board of Arbitrators dated Dec. 20, 1958, in respect to compensation for rights-of-way expropriated by the Union Gas Company of Canada Limited and assigned unto the Ontario Natural Gas Storage and Pipe Lines Limited and for damages resulting from such expropriation.

A hearing to determine the amount of compensation to be awarded to Jacob Driesman was held on Dec. 4 and 5, 1958 before the Board of Arbitrators. Subsequently, on Dec. 20, 1958 an unsigned copy of an award was forwarded to Driesman who then launched an appeal to this board which dismissed it because the notice of appeal was not served within the time prescribed by the statute.

Eventually in April 1959 Driesman for the first time received a signed copy of the award and within the time limited for appeal served notice of appeal dated April 8, 1959.

Subsequently, this board gave an appointment for hearing argument only on the preliminary question whether the notice of appeal was served within the proper time to give the board jurisdiction to hear the matter.

The next point in this appeal was whether the unsigned copy of the award forwarded in December 1958 was in fact an award, with the time for appeal commencing to run from the date of mailing, or whether in fact no award was made at all until the signed copy of the award was mailed in April 1959.

The case most relevant seemed to be *Nott vs. Nott 1884.* 5 Ontario Reports 283. Here the award had been signed by the

*Present, C. W. Yates, Q.C., Vice-Chairman and D. Jamieson, Esq.

arbitrators but not in the presence of each other. On appeal it was decided that the award could not stand. Among the points recorded was the following, on p. 294 of the judgment:

> "I had hoped to have been able to find authority enabling the court to hold that the judicial act in this case was not the signing of the award but the previous determination of the arbitrators; but I have not been able to find any authority."

Accordingly it appeared to the board that the mailing of an unsigned copy of the award was not in compliance with the act so that the time for appeal did not commence to run until in fact there was an award—that is, a signed award published to the parties.

Consequently the board found that the notice of appeal herein had been served within the proper time and that the appeal was properly constituted. The appeal was to be heard later.

Appeal admitted.

PECHE ISLAND LIMITED v. JOHN A. McWILLIAM

*January 29th, 1960. P.F.M. 8393
amended February 2nd, 1960.

Assessment—Appeal from decision of The County Judge—Lack of precedent and comparisons—Business-like approach commended. Sec. 80 The Assessment Act (R.S.O. 1950, c. 24), as amended.

William A. Willson, for Peche Island Ltd.—appellant.
J. McMahon, for the Township of Sandwich East.
W. Prince, and L. Z. McPherson, for John A. McWilliam, respondent.

This was an appeal from the decision of His Honour Judge Albert J. Gordon, Judge of the County Court of the County of Essex dated December 31, 1958 with respect to the assessment made in 1958 for taxation in 1959 of the property known and described as Peche Island located near the junction of the Detroit River and Lake St. Clair, the Township of Sandwich East. The appeal was against the assessment of the land, there being no buildings on the island.

*Present, David Jamieson, Esq., and V. S. Milburn, Esq.

For many years, no use had been made of the island. In 1956 the present owners had acquired it, together with other lands in the Town of Riverside, for $200,000 U.S. funds. The board could not determine from the evidence the apportionment of sale price between the island and the other land involved. For many years—"back into the 1920's" according to the assessor—the island bore an assessment of $100,000. In 1957 the island was assessed for $20,000 and the court of revision confirmed this. The County Court Judge increased this to $55,000. Peche Island Limited asked that the $20,000 assessment be restored while Mr. John McWilliam and the municipality asked that the $55,000, set by the county judge be confirmed.

When Mr. C. T. Oullette, made the assessment in 1958 he placed an assessment of $400 per acre against 50 acres which he felt were usable. This he reduced by 20% because of location leaving $16,000. The remaining 50 acres he classed as marshy or slash land which he assessed at $45 per acre, producing $2,250. A further area of 175 acres being under water was classed as "water lots" which he assessed at $10 per acre or $1,750 for the area. On these bases the assessment totalled $20,000. Before adopting the $400 per acre figure he found from the county assessor that Fighting Island in Sandwich West was so assessed, also that there were no other water lots assessed in the county.

In 1958 the only use had been for the dumping of rubble. Allowance for location had been made as noted. There was no information on rental values nor exact information on sales value available. This being the only island in the municipality there seemed to be no comparable lands in the townships. Sales of land for industry were at least 6 miles away. Mr. Stanley Loveridge a realtor experienced in the area placed a value of $299,000 on the island in 1958.

The transcript of the proceedings before the county judge was not before the board so his method of arriving at the $55,000 assessment was not apparent.

From all the evidence, particularly the comparison of various rates of land assessment, the board was of the opinion that the assessment of the subject land should not exceed $20,000.

Appeal allowed.

ROBERT K. WINLAW v. OXFORD COUNTY

*February 3rd, 1960. P.F.M. 8386

Compensation—Expropriation of property frontage to widen highway—Effect of removal of screen of trees—Effects of raising grade of road—Effects of water run-off—Section 61 of The Highway Improvement Act, 1957.

W. E. G. YOUNG, for the claimant.

R. W. MACDOUGALL, for the respondent.

This was an application for determination by this board of compensation to be paid by the respondent for 0.315 acre of land expropriated for the widening of the north side of Governor's Road as shown on plan registered July 17, 1958 as number A17639.

In July 1953 claimant purchased the entire property of 9.6 acres, without building for $1,000. Across the front were a number of trees, now destroyed in the road widening. In 1955 claimant built a brick ranch bungalow on the property at a contract price of $14,000. Claimant himself did additional work such as wiring, plumbing, septic tank bed, grading and landscaping. In 1958 he built a fish pond and swimming pool in the south-west part of the property near the road all of which he claimed increased the value of the property to $18,000.

Claimant felt that the following damages were incurred viz: (1) value of land taken, $2,000, (2) loss and damage to trees, $700, (3) loss of access to west entrance including cost of fill, $1,500, (4) erosion and silting of pond, $1,000, (5) severance damages and loss of building lots, $1,000—total $6,200. He felt that present day selling price would be $14,000.

Item (3) was settled almost at once by the undertaking of the County to restore the west driveway.

Mr. Hector Simons real estate valuator placed a value of $17,000 before the road widening with a value of $14,000 afterwards —"a fairly high value" incidentally because of loss of trees and exposure of the pond to the highway. Also the potential value of three or four lots which might be created at the east end had been reduced because the new road was higher than the old one and also this land. It was claimed that water running from the

*Present, C. F. Nunn, Esq., and D. Jamieson, Esq.

road allowance eroded the subject lands and seeped into the pond. He said the "straight land value" of the land taken was $31.50. As for the trees, some had been on the road allowance and some on the subject property. Removal of these trees reduced privacy. The west entrance needed improvements.

Mr. Kenneth Hiltz, real estate broker estimated that of the 16 large trees formerly across the property 10 were on the road allowance and 6 on the claimant's property. His valuation of the whole property before taking was $16,500 with a subsequent reduction to $14,000 due largely to loss of privacy and reduced potential value of the lots already mentioned. He placed a value of $200 on the land taken, referring to a nearby sale at $500 per acre.

Mr. Ronald E. Bliss, contractor, estimated the cost of restoring the west driveway at $900 and of removing 2 feet of material from the bottom of the pond at $600. About $500 would pay for 150 feet of pipe and ditching across the front of the property to stop water from running in from the road allowance.

Mr. Robert Smith, C.E., O.L.S., in charge of the road widening stated that there was no wash into the pond, that it was 100 to 150 feet from the road and that a negligible amount of silt ran from the road, with nothing running into the pond. At Mr. Winlaw's request a pipe had been placed under the road near the east limit of the property and this now carried away the water complained of from the north ditch to the south ditch.

Mr. R. B. Jenby of O.A.C., a valuator, placed a value of $100 on the 1/3 acre actually taken. To improve two possible building sites would cost about $210 for fill. $500 would cover the cost of planting 36-inch trees across the front. The western entrance could be built up to highway level at a cost of $400.

Mr. Roy Hughes, Chairman, Tree Conservation Committee, Oxford County, estimated that $150 spent now for tree planting would improve the appearance of the property in ten years.

Taking into consideration the statements of these and other witnesses the board accepted the value submitted for the land taken as $200.

As for the removal of the trees the board felt that the claimant was not asking for compensation at so much per tree but rather that removal of all the trees had reduced the value of the property

by destroying the privacy. Replacement by small trees would involve years for growth. The board was of the opinion that the $700 claimed was reasonable and so awarded, on this point.

Since the claimant accepted the County's undertaking to restore the westerly driveway no award was made on this point.

As to the lots to be created in the future, the only evidence as to the amount of compensation was by Mr. Jenby at $210 and so the board awarded this amount on this point.

Regarding the damage allegedly caused by the run-off from the roadway carrying silt into the pond the board was of the opinion that previous to remedial measures there had been silt carried into the pond and made an award of $600 for removal based on Mr. Bliss's evidence.

The complete award was as follows:

Land taken	$ 200.00
Loss and damage to trees	700.00
Loss of access to west entrance settled	nil
Erosion of top soil and removing silt from pond	600.00
Damage to future building lots at easterly end of frontage	210.00
	$1,710.00
10% for forcible taking	171.00
Total	$1,881.00

(plus interest at 5% per annum from date of possession.)

M. BAKER v. TOWNSHIP OF NORTH YORK

*February 8th, 1960. P.F.M. 8818

Restricted Area—Amending by-law to permit apartments of certain type—No opposition to basic change—Municipal authorities favoured more restrictive density. Sec. 27(a) 19, The Planning Act, 1955.

V. M. Singer, Q.C., for the appellant.

W. S. Rogers, Q.C., for the Township of North York.

This was an appeal by Mr. M. Baker for an order directing an amendment to By-law 7625, to change from single family to RM6, the zoning of certain lands composed of Lot 4, Concession IV, W.Y.S. to permit the erection of apartment houses.

*Present, C. W. Yates, Q.C., Vice-Chairman, and D. Jamieson, Esq.

The land in question abutted the western limit of Dufferin Street approximately 131 ft., the south side of Glen Park Avenue approximately 605 ft., along the east side of Ennerdale Avenue about 130 ft. and the width of the lands at the rear, or south, is approximately 587 ft.

All the land abutting on Dufferin Street to a depth of 125 ft. was in the Commercial Use Zone. The remainder was in an R4 zone—residential uses limited to single-family dwellings.

The land opposite the subject property, on the north side of Glen Park Avenue was in a C1 or General Commercial Use Zone which permits apartment houses. To the north of this was a township park. To the west and south of the subject lands were mostly single-family bungalows, 10 years or more old.

This matter had been considered by the Township's Planning Staff and Planning Board. In March 1959 the Planning Director recommended that the subject lands be placed in an RM5 zone subject to certain conditions. Seven semi-detached triplex buildings were suggested. Apartment houses are permitted in an RM5 zone though of more restricted density than in RM6. The matter was before the Planning Board and Council several times. Throughout the open discussions no objections were made by residents of the area. Finally the Planning Board decided against the application, recommending "that the subject lands be developed as a normal subdivision application with consideration being given to storm drainage, street surfaces, traffic flow and other related matters." This report was adopted by Township Council.

Mrs. O. Bishop, professional town planner stated that single-family dwellings would be out of their element and maintained that the RM6 classification would produce fewer dwelling units than the RM5 as more open space was required in the former.

From the evidence the board considered it very unlikely that these lands would be used for single-family dwellings. The commercial zoning across the street would permit erection of apartment houses, other residential uses as in an R5 or RM5 zone, or the commercial uses named in the By-law. The RM5 zoning had been favoured by the Director of Planning in 1959.

The board therefore was of the opinion that the RM5 classification was a reasonable one and would so direct an amendment to By-law 7625.

Appeal modified and allowed.

RE THE BRADFORD DISTRICT HIGH SCHOOL BOARD

*February 8th, 1960. P.F.M. 8717

High School Board—Apportionment of liability among constituent municipalities—Use of factors authorized by law not always reasonable. Sec. 33, The Secondary Schools and Boards of Education Act, 1954 (c. 87).

J. D. PICKUP, Q.C., for the Township of Innisfil.

C. T. S. EVANS, Q.C., for the Township of West Gwillimbury and the Village of Bradford.

T. E. EVANS, Assisting.

This was a reference by the Bradford District High School Board composed of the Village of Bradford and parts of the Townships of Innisfil and West Gwillimbury, of the objection of the Township of Innisfil to the decision of the Board of Arbitrators dated March 5, 1959, with respect to the proportion of liability which each municipality within the said high school district should bear.

The arbitrators had declared equalized assessment to be the major factor in apportioning liability and that some lesser consideration should be given to population and student enrolment. The award gave the formula to be used in determining liability, namely student enrolment 16 2/3%, population 16 2/3%, equalized assessment 66 2/3%.

The board found that the circumstances in this case did not warrant the application of the population and student enrolment factors nor in fact any other of the factors shown in Sec. 33 ss. 12 of the Act. A division of liability made in accordance with the equalized assessments did not, in the opinion of the board, impose an undue burden on the ratepayers in the several municipalities.

The board found that the decision of the arbitrators should be varied and the division of liability should be made on the basis of equalized assessment as follows:

Bradford	27.7041%
Innisfil	37.4405%
West Gwillimbury	34.8554%
	100%

Appeal allowed.

*Present, C. F. Nunn, Esq., and W. Greenwood, Esq., B.Sc.

Re VILLAGE OF MARKHAM

*February 12th, 1960. P.F.E. 3931

Capital expenditure—Parking lot—Opposed as undue burden on some ratepayers—Requirements not carefully analysed—Alternative plans still being studied. Sec. 67, The Ontario Municipal Board Act (R.S.O. 1950 c. 262) and Sec. 386 par. 52, The Municipal Act (R.S.O. 1950 c. 243).

J. L. Cattanach, for the Village of Markham.

This was an application for approval of By-law No. 970 for acquiring certain lands for a parking lot and the issuing of debentures in the amount of $65,000 to meet the cost of acquisition and necessary improvement and the levying of such cost against the lands in a certain defined area.

A scarcity of curb parking particularly in the central business area had been apparent for some time. The council had worked on this plan at the request of a group of businessmen.

Opposition developed from the other businessmen claiming (1) cost was more than they could afford, (2) off-street parking was not needed, (3) they were not benefited.

Out of a total of 41 assessed owners in the area 24 opposed the by-law—less than two-thirds. In the matter of assessed value however the ratio was $142,000 to $215,000 or approximately 66%.

Several ratepayers stated their share of this cost would be over $300 per annum—in addition to an already heavy financial burden. Others stated that the removal of the Post Office and the opening of a new shopping centre both now outside the central business area had reduced congestion and satisfactorily increased available curb parking. Still others pointed out that they already provided off-street parking which had not yet been used to capacity. No detailed evidence was provided to show the intensity of curb parking, degree of congestion and the amount of off-street parking required for relief.

The board was of the opinion that the cost of the proposed off-street parking would be a heavy burden on a number of those assessed.

However the council was considering at that very time plans which would be less costly.

For these reasons the board decided that the by-law should not be approved.

Application refused.

*Present, D. Jamieson, Esq., A. L. McCrae, Esq.

ONTARIO NATURAL GAS STORAGE AND PIPELINES LIMITED v. MALCOLM CAMPBELL TOOHILL

*February 12th, 1960. P.F.M. 8242

Compensation—Expropriation of private lands for pipe line right-of-way—Crop damage—Restoration of land after pipe laying—Section 5 of The Pipe Lines Act, 1958 (O.S. 1958, c. 78).

L. G. O'Connor, Q.C., for the appellant.
The respondent in person.

This was an appeal by Ontario Natural Gas Storage and Pipelines Limited from an award of the Board of Arbitrators dated December 20, 1958 allowing compensation in the sum of $687 to the owner of Lots 4, 5 and 7, Con. 5 Township of Metcalfe, County of Middlesex, for land taken in a 60 foot easement across these lands and for damage to crops, bush land, etc. in the sum of $1,450—total $2,137 plus interest at 5% per annum from date of expropriation to date of award. The compensation for land was not in dispute but the $1,450 for damages was. This was made up as: Crop loss, $600; bush damage, $96; land restoration, $554; fertilizer and seed $200.

Concern was expressed by the respondent about danger from the pipelines to the house. Since the installation was made according to established requirements in every detail the board could make no allowance for this apprehension.

Regarding the amount for bush damage ($96) evidence varied widely but the board considered the original award adequate.

Regarding crop damage, Hanley Reaume, land adjuster for the appellant and unofficial crop appraiser estimated damage the first year would be in the amount of $368.49 which the board increased to $400 and found fair. Respondent claimed it would take a long time to restore the lands in and adjacent to the easement to normal. Dr. F. L. Wynd, a highly qualified Agricultural Consultant, was called by the appellant in this phase. From his evidence the board found that this land could be restored to normal fertility by methods he recommended, of which however the respondent had not been apprised in time to take full advan-

*Present, J. A. Kennedy, Q.C., Chairman, and A. L. McCrae, Esq.

tage of them and so would be entitled to one-half the $400 for the second year. Thus the total allowance would be $600 as originally.

Regarding the items of $554 for restoration of the land and the $200 for fertilizer and seed, the board found on the evidence of Dr. Wynd that this amount was excessive. By employing well-tested methods it should be possible to restore this land completely for the first crop after the year of disturbance for $100 to $150 for labour and fertilizer. The total for these two items was reduced to $150. The award therefore was as follows:

Crop loss	$600.00	
Bush damage	96.00	
Labour and Material for land restoration	150.00	
Compensation for land in right-of-way (as agreed)	687.00	$1,533.00

To this amount was to be added interest at the rate of 5% per annum from the date of expropriation to the date of payment. Since the respondent did not employ a solicitor nor was represented by counsel no order as to costs was made.

Award accordingly.

Re TOWNSHIP OF EAST YORK

*February 18th, 1960. P.F.M. 9667, 9654

Restricted Area — Approval of by-laws — Projects partly developed before restriction imposed have claim to exemption. Sec. 27a, The Planning Act, 1955.

J. B. Conlin, for The Hampton Park Company Limited and S. Landau.

This was an application of the Township of East York for approval of Restricted Area By-laws 6688 and 6689.

One of the provisions of the by-law was that parking space must be provided on the same lot as the building for which it was required. For the parcel of land located on Rexleigh Drive south of St. Clair Avenue and north of Ferris Road an exemption was sought.

*Present, C. W. Yates, Q.C., Vice-Chairman and R. C. Rowland, Esq., Vice-Chairman.

It appeared that there had been a long series of negotiations between the Township and the owners regarding the installation of services. As a result the owners produced plans for the development of the lands as apartments and had already constructed one and another was under construction. Off-street parking had been provided for, not on the same lot as the particular building for which it was required, but as part of one entire project. All these negotiations had taken place prior to the preparation of the by-law in question and the plans had been developed on the assumption that the only requirement would be as to the number of parking spaces, not their location on the same lot as any particular building. Consequently it would appear to be a hardship on this developer to have this regulation forced on him now.

The board accordingly approved the by-law subject to the various matters mentioned in the oral decision, provided that the lands referred to are exempted from the requirement contained in Sec. 12 (b)(IV) that the parking space must be provided on the same lot as the building for which it is required.

Application modified and approved.

RE THE TOWNSHIP OF WEST FLAMBOROUGH

*February 19th, 1960. P.F.M. 9992

Restricted area—Approval of by-law—Minimum lot sizes—Inconsistency of local planning board insufficient warrant for changing well established restrictions. Sec. 27a, The Planning Act, 1955.

J. R. NICOL, clerk, Township of West Flamborough.

This was an application of the Township of West Flamborough for approval of its Restricted Area By-law 2183 amending By-law 2164 which applied to the lands within the boundaries of Registered Plan 1126, the "Kill-Carey" Survey, registered in 1958. By-law 2164 required a minimum lot size of two acres as stipulated by the Minister of Planning and Development in his approval of the plan.

A Mr. F. Bennett stated that he had purchased Lot 4 of this plan and had then divided this lot into 4 parcels varying in size from 15,088 sq. ft. to 24,000 sq. ft. The Hamilton-Wentworth Plan-

*Present, C. F. Nunn, Esq., and D. Jamieson, Esq.

ning Area Board had endorsed their consent to registration but when the owners of these parcels applied for building permits they were refused because of the two-acre lot area requirement.

Stress was laid on the hardship of these owners if they could not build on their land.

Mrs. O. Carey who developed the subject plan of subdivision informed the board that she had originally intended to have lots much smaller than 2 acres but the Hamilton-Wentworth Planning Area Board would not agree. Neither would they agree to smaller lots in an adjoining area she was planning to subdivide.

The Planning Board was not represented at the hearing.

The subject area is not served by municipal water system, sanitary or storm sewers, such facilities being miles distant. There was no suggestion that West Flamborough would install such services.

If the by-law were approved, the result would be a drastic reduction in the minimum area of lots, which restriction had been established only recently. In respect to municipal services the situation was just the same as it had been in 1958. The board was of the opinion that the evidence was not sufficient to warrant the granting of approval of this by-law.

Application refused.

ESTATE OF GORDON CLIFFORD LEITCH v. TOWNSHIP OF MARKHAM

*February 22nd, 1960. P.F.M. 8366

Assessment—Appeal from decision of County Judge—Position of Executors in continuing operation of farm. Sec. 33, ss. 2a and Sec. 80, The Assessment Act (R.S.O. 1950, c. 24), as amended.

J. D. Lucas, Q.C., for the Township of Markham.

J. M. Godfrey, Q.C., for the appellant.

This was an appeal by the executors and trustees of the estate of Gordon Clifford Leitch, deceased, from a decision of His Honour Judge MacRae, judge of the County Court of the County of York, dated January 13, 1959, with respect to the assessment made in the

*Present, C. W. Yates, Q.C., Vice-Chairman, and W. Greenwood, Esq., B.Sc.

year 1958 for taxation in the year 1959 of the property known and described as lot 8, con. 2W; lot 9, con. 3W; lot 9, con. 2E and W; lot 10, con. 2E; lot 10, con. 2W; lots 11 and 12, con. 2E; lot 9, con. 3W in the Township of Markham.

The deceased had been owner of a large farm, 80% of the income from which was derived from the sale of farm produce and the balance from fees for testing farm products. After his death his personal representatives did not dispose of the farm but continued to operate it apparently in exactly the same manner as before. Although the principal part of the income of the estate was being derived from this farm, the principal occupation of the executors and trustees was not farming.

This point was important because in the Township of Markham farm lands were assessed on two different bases. Firstly, by applying section 33, ss. 2a which deals with the value of farm lands owned by one "whose principal business is farming". Secondly, by not taking this subsection into account. In the present case, in valuing the subject lands, this subsection had not been applied.

The question before the board therefore was whether or not the personal representatives of a deceased person whose principal occupation was farming stood in the same position as the deceased so as to benefit through this subsection.

The Assessment Act is in effect a taxing statute and as such must be construed strictly and so must any exemptions provided in it. So, it appeared that the current owners of the land, even if personal representatives of the deceased, not having farming as their principal occupation, were not entitled to the benefit of this particular subsection.

Neither counsel made any objection on the ground that the board was without jurisdiction to determine what might be regarded as a question of law. Nevertheless the board considered this point and felt that according to the judgments in *The London Railway Commission et al, v. the Village of Port Stanley,* 1954, O.R. 487 (particularly at p. 491) and *Re the Town of Copper Cliff and the Town of Frood Mine et al,* 1957, O.W.N. 411 (particularly at p. 416), it not only had the right but also the duty to do so.

In spite of several ingenious arguments advanced by the appellants the board felt that these did not affect the plain meaning of the subsection and were therefore irrelevant.

Appeal dismissed.

G. CARSON AND T. CARSON, R. ROBINSON AND K. ROBINSON, W. E. DONGEN AND THE TOWNSHIP OF MARKHAM

*February 23rd, 1960. P.F.M. 5121

Procedure—Application for invalidation of municipal by-law insofar as it affected applicants' land, for compensation and for mandamus or injunction—no protection for municipality if acting without proper by-law—Jurisdiction of board limited. Sec. 99, The Municipal Drainage Act (R.S.O. 1950, c. 246).

This was an application brought by Graham Carson and Theresa Carson; Raymond Robinson and Kathleen Robinson; and William Edward Dongen pursuant to *The Municipal Drainage Act* (R.S.O. 1950, c. 246) to declare null and void the provisions of by-law 1505 of the Township of Markham, for determination of compensation to be paid for injury to the applicants' lands and for a mandamus or injunction restraining the Township of Markham from using the lands of the applicants to carry out the drainage works proposed by by-law 1505.

The board did not feel that it was necessary to set out all the facts brought forth at the hearing as it felt that there had been a defect in the proceedings. By-law 1505 which purported to authorize the drainage works was not finally passed by the council until August 29, 1955, after the completion of the drainage works. It therefore appeared to the board that the municipality was not acting under the statutory authority of *The Municipal Drainage Act* and so was not entitled to the protection that Act affords. See *Lawrence v. Owen Sound,* 5 (1903) O.L.R. 369, viz: "Here the municipality acted without a by-law; they had therefore no right to do the act complained of and are liable to an action for doing it because it was a trespass."

If the actions of the municipality were not performed pursuant to statutory authority then it appeared that the board was without jurisdiction. The board therefore made no order except that the Township of Markham should pay the costs of reporting the proceedings.

No order made.

*Present, C. W. Yates, Q.C., Vice-Chairman, and W. Greenwood, Esq., B.Sc.

Re THE TOWNSHIP OF TORONTO

*February 29th, 1960. P.F.M. 8732

Restricted area—Approval of by-law—Acknowledged within power of Township—Objections on grounds of impossibility of appeal, of unfairness to certain class, on unfair confiscation of minerals—Sec. 388(1), p. 114(a), The Municipal Act—Sec. 27a, The Planning Act.

This was an application of the Township of Toronto for approval of its restricted area by-law 2775. Actually this decision or reasons for the decision was issued subsequent to the actual approval which the board felt was of sufficient urgency to issue on June 12, 1959.

The by-law in question, relating to gravel pits, was passed pursuant to section 388 (1) 114a which was enacted by an amendment to *The Municipal Act* contained in O.S. 1959, c. 62, s. 18, being in effect the complete exercise by the Township of the powers granted to it by the Legislature in this amendment.

The application was vigorously opposed by the Aggregate Producers Association of Ontario and also by certain individuals and corporations.

It was claimed that the effect of the by-law was virtually a confiscation of gravel and gravel rights of the land owners without compensation. The board was concerned only with whether or not the Township was authorized to pass the by-law in the first place, and it appeared that it was. This point was not disputed.

Another argument, against, was that approval would be a conclusive step from which no appeal was permitted as existed under the former Sec. 390 of *The Municipal Act,* now Sec. 27a of *The Planning Act.* However the prohibition contained in Sec. 1 of the by-law applied to carrying on or operating a pit or quarry in any area in the Township in which the use of land is restricted to residential or commercial use by any of the by-laws of the Township or by an official plan of the Township. Relief from the by-law could be obtained either by an amendment to the by-laws or the official plan or if such is not considered effective then by legislation but not by withholding of the board's approval at this stage.

Another argument, against, was that because of the many amendments to by-laws 1614 and 2273 great difficulty might be encountered

*Present, C. W. Yates, Q.C., Vice-Chairman, and A. L. McCrae, Esq.

in ascertaining whether or not any individual's lands were affected by this by-law, with consequent hardship on land owners. The board felt these particular land owners to be in the same position as other owners affected by restricted area by-laws. If the land owner proposes to either sell or develop his lands for industrial purposes he must ascertain that they are zoned for industrial uses in precisely the same way that the owners of gravel lands must ascertain if they are similarly zoned.

It was also claimed unfair to confiscate minerals unless there were some maps from which owners could ascertain their rights. As a matter of fact such maps do exist. They constitute the official plan and amendments thereto, available to any person at any time.

In the board's opinion none of the arguments advanced was of sufficient weight to justify a dismissal of the application.

Application approved.

PROPOSED INCORPORATION OF VILLAGE OF PETAWAWA

*February 29th, 1960. P.F.M. 9731

Incorporation—As village—Exclusion of area originally proposed—Estimated assessment—Effect on assessment of remainder of Township. Sections 10(3) and 12, The Municipal Act (R.S.O. 1950, c. 243), as amended.

W. T. Hollinger, for petitioners.

Allan Huckabone, for objectors.

This was an application by 293 inhabitants of a certain area in the Township of Petawawa for incorporation as a village to be known as "The Corporation of the Village of Petawawa."

At the hearing there was no objection by the Township. The only issue that was discussed was whether there should be included in the proposed village an area called the "Point Area." As this was used exclusively for summer cottage purposes, it seemed that no benefit would accrue to these residents from the incorporation, and their inclusion did not seem justified.

The applicants later submitted statistics indicating the financial ability of the area to sustain itself under incorporation and also the effect upon the remainder of the Township. According to these figures the estimated assessment was $653,000 being more

*Present, C. W. Yates, Q.C., Vice-Chairman, and A. L. McCrae, Esq.

than in any of the incorporated villages in the County except Eganville, with an assessment of $757,532. The remainder of the Township after incorporation would have an assessment of $832,000 which would appear to be adequate for the services it would then have to provide.

The applicants were directed to obtain information regarding separate and public schools for the proposed village so that details of an order could be worked out.

The board concluded that the application should be granted in respect to the area applied for except the so-called "Point Area" described in schedule "A" attached to the original decision. Effective date January 1, 1961.

Application modified and approved.

SUTTON PLACE INVESTMENTS v. CITY OF TORONTO

*March 7th, 1960. P.F.M. 8985

Restricted area—Amendment to by-law to permit multi-storey apartments in certain "single dwelling" area—unanimous opinion of different civic bodies should be upset only in exceptional circumstances. Sec. 27a (19), The Planning Act, 1955.

J. Sedgwick, Q.C., and E. A. Goodman, Q.C., for the applicant.
R. C. Baird, Q.C., for the City of Toronto.
J. T. Weir, Q.C., for thirty residents of Castle Frank Road.
J. R. Howard, for E. A. Harris Estate.
D. A. Keith, Q.C., and D. H. Carruthers, for South Rosedale Ratepayers' Association.

This was an appeal by Sutton Place Developments for an order directing the City of Toronto to amend by-law 20263 which would zone the 9-acre property formerly owned by Sir Edward Kemp and located at Castle Frank Road and Bloor Street for multiple dwelling use, 5th density to permit "high rise" apartments.

An application for the relief then sought was made by the appellant to the City Council on Jan. 16, 1959. After studying both sides of the question through this hearing and through the reports of the planning board, planning staff, city traffic engineer, director of the city traffic division and the metropolitan commissioner of roads the City Council refused the application.

*President, J. A. Kennedy, Q.C., Chairman, and A. L. McCrae, Esq.

While no written reasons for the refusal were given it is highly probable that these could be reduced to (a) opposition by owners of high priced single family residences adjoining and (b) probable increase in traffic congestion at rush hours on nearby Bloor Street.

At the board hearing evidence was adduced designed to alter opinion on these two points. The board, however, was not convinced that this was of sufficient weight as to upset the conclusions formed by the civic authorities already mentioned.

The board has held in previous cases that it should decline to interfere with the exercise by elected representatives of the discretion given to them in these matters by the Legislature except where it can be shown that this action is clearly not for the greatest common good, that it has created an undue hardship, that some private right has been denied or unduly interfered with, that they have acted arbitrarily, on incorrect information or advice, or otherwise improperly. The board finds in this case that the evidence falls short of satisfying any of these requirements.

However this decision was not to be taken as precluding any development of the subject lands except for single family residences. Institutional use or some other use of a lower density were possibilities.

Appeal dismissed.

RE CITY OF SUDBURY

*March 30th, 1960. P.F.D. 4993

Dispensation of vote—Capital expenditure—Throughway and underpass—Basic proposal already approved by vote—Negotiations already well advanced. Sections 66 and 67 of The Ontario Municipal Board Act (R.S.O. 1950, c. 262).

JOHN RYAN, for the City of Sudbury.

This was an application of the City of Sudbury for (a) authority to dispense with a vote of the electors with respect to the construction of Brady Street Throughway, the underpass and the pedestrian subway joining Riverside Drive and Elgin Street at a cost of $1,660,000, and the issue of debentures therefor to the extent sufficient to provide an amount not exceeding $585,000 repayable

*Present, R. L. Kennedy, Esq. Report adopted by J. A. Kennedy, Q.C., Chairman, and C. F. Nunn, Esq.

over a term not exceeding ten years (b) approval of the said undertaking and capital expenditure.

In December 1955 by-law 55-177 for construction of an underpass under the railway tracks at Elgin Street and Riverside Drive in Sudbury costing $800,000 was approved by the electors. Since then the board had approved an expenditure of $45,000 for plans and engineering, approved dispensing with the vote of the electors and approved an expenditure of $117,000 for the purchase of lands required for the project, and further had approved an expenditure of $15,000 for an engineer's report. On September 8, 1959, the C.P.R. made an agreement with the city covering the terms of construction and subject to all required approvals being obtained by the city, agreed to contribute land and money to a value of $353,000.

It was stated that the plans for the proposed work had been approved by the Board of Transport Commissioners, but nothing had been received in writing by which the board authorized a grant towards the cost. The amount of such a grant from the Railway Grade Crossing Fund was estimated at $500,000. There was said to be assurance from all levels of The Department of Highways that a grant of 33⅓% of the cost would be forthcoming. If it were designated as part of a connecting link road then this would increase to 50%. However there was nothing in the file indicating any approval by that Department.

Two former members of council expressed opposition to dispensing with a vote of the electors. They pointed out that the cost of the proposal approved by the electors in 1955 was less than one-half of the present one. Furthermore since that vote the boundaries of the city had been considerably extended, taking in several thousand new electors. Any increased subsidy from the Province, due to this road being a connecting link, would involve the city in an enormous additional expenditure for construction of such a road.

In view of the lack of approval necessary for the grant and subsidy noted, the board did not feel that it should take immediate action. On receipt of definite assurance that the subsidy and grant will be paid, the board recommended that the vote of the electors be dispensed with and that tentative approval be given so that tenders might be called to ascertain whether or not the work could be completed within the amount estimated.

Approval held in abeyance.

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JOHN W. RICHEY v. CREDIT VALLEY CONSERVATION AUTHORITY

*April 8th, 1960. P.F.M. 10159

Compensation—Expropriation of lands from cattle enterprise to park use—Difficulty of finding valuation comparables—Hearsay re future development not admitted—Section 22 of The Conservation Authorities Act (R.S.O. 1950, c. 62), as amended by O.S. 1952, c. 11, s. 7.

W. G. Dingwall, for appellant.

J. T. Weir, Q.C., for respondent.

This was an appeal by John W. Richey from the report of the Advisory Board of Compensation for the Credit Valley Conservation Authority dated October 14, 1959, recommending compensation for some 59.7 acres of land taken.

The subject holding was a 123.5 ac. farm fronting on E. Third Street, Orangeville, the land expropriated being the north and easterly portion, gradually dropping off to the Credit River. Of the parcel expropriated 6.70 ac. were arable, the remainder not so, being covered with scrub and some small trees. The frontage was zoned industrial for a depth of 544.5 ft. and several parcels had been sold to industry in the past. Agricultural zoning had been placed on the balance of the property including the portion expropriated. At the west boundary of the expropriated property the land broke away to a fairly level swamp area. The arable portion of the land taken varied from 4 to 8 feet higher than the swamp land.

The appellant conducted a business of buying and reselling cattle, this particular farm being a sorting centre where in the course of a year some 1,500 to 2,000 head were pastured en route to other farms. Shade and water were very necessary and it was claimed that the expropriation had taken all the "good" water, most of the shade and reduced considerably the shoreline where his cattle formerly drank. He felt that his operations would have to be curtailed although he was trying to acquire other desirable premises without success. He claimed that pumping water into troughs was much less satisfactory than watering at the stream.

Two witnesses were called by the appellant to establish land values. The first claimed that non-arable was worth $200 per acre

*Present, C. F. Nunn, Esq., and A. L. McCrae, Esq.

and the arable, $350, based on the location within the town and its proximity to the industrial belt. The only comparables used in arriving at this valuation were the industrial properties on East Third Street previously sold by the appellant.

The second witness concurred with the appellant that there was no other suitable property available in the district. He believed the appellant's property more valuable because in town. Non-arable land in town would be worth $100 per acre; outside it would be $75 per acre. The arable land was considered to be worth $900 per acre, his comparable being a one-acre parcel of industrial land sold by the appellant to a bottling plant for $3,000. His estimate for the total acreage expropriated was $12,380. It was said that a by-pass on Highway No. 10 would soon be constructed in the area but that was only hearsay and could not be recognized by the board.

The respondent called an appraiser associated with the Veterans' Land Act. He stated that practically speaking, in the lands taken, there were none suitable for industrial use—only agricultural and forestry. A narrow industrial site might be achieved north of the theatre property but would require considerable fill. He estimated the acreage prices as: 6.7 ac. at $190; 12 ac. at $60; 41 ac. at $40. This amounted to approximately $3,650. To this was added $620 for the 45 feet of potential industrial property fronting on East Third Street, contained in the 208 feet of frontage taken, over and above the agriculture value. The addition of $1,050 for fencing taken provided a value rounded out to $5,400. The board was impressed by the survey and analysis of this witness and the fact that his comparables were of the type of land under discussion not industrial or commercial.

It was not proven to the board's satisfaction that the cattle operation would suffer because of land taken or change in the quality or quantity of the water. The 200 feet of shoreline remaining appeared adequate for watering.

The board decided that $5,400 would be fair compensation. To this would be added 10% for forcible taking, plus interest at 5% per annum from the date of possession to the date of payment. Appellant was entitled to costs on the Supreme Court scale. Respondent to pay for reporting of proceedings.

RE THE TOWN OF BRAMPTON

*April 14th, 1960. P.F.M. 10243

Restricted area—Approval of by-law—Areas intended for non-residential use should not be classified as "residential". Sec. 27a, The Planning Act, 1955.

G. H. MARSDEN, Esq., for the Town of Brampton.

J. E. BEATTY, Esq., for Brampton Shopping Centre land owners.

This was an application of the Corporation of the Town of Brampton for approval of its restricted area by-law 1722.

The land affected by the by-law was a part of registered plan No. 581, bounded by Highway No. 10; block "N" and Eldomar Avenue; Meadowland Gate, and Nanwood Drive. Up to this time there had been no restrictions on the use of this land.

By-law 1722 proposed to restrict blocks "B" and "C" and lots 1 to 11 and a part of lot 12, all of which front on Meadowland Gate, to commercial use. The remaining front portion of lots 1 to 12 and all of lot 13 to be zoned for residential use.

There was no opposition to the approval.

A shopping centre had been provided for on the land zoned as commercial. From the plan it appeared that the portions of lots 5 to 12 zoned for residential use would be too small to meet the requirement for lot area and spacing. The explanation was that it was not intended to erect any buildings on the front portion of these lots, but to use them for parking in connection with the shopping centre just mentioned. Sec. 2 of by-law 1539 permitted use in *The Residence Zone, R*—"commercial or municipal parking provided it is within 100 feet of a commercial use area."

While this may be a permissible use under certain circumstances the classification "residential" implies a preponderant use for dwellings and it is questionable if an area should be so classified when it is not intended to use any part of it for its avowed use. The board therefore was of the opinion that the lands set out in schedule "A" and schedule "B" should be zoned as commercial lands with a further restriction that lands in schedule "B" may be used only for parking vehicles. If the by-law be so amended the by-law would be approved without further notice of hearing.

Application approved conditionally.

*Present R. L. Kennedy, Esq., Vice-Chairman. Report adopted by J. A. Kennedy, Q.C., Chairman, and V. S. Milburn, Esq.

ST. MICHAEL'S UKRAINIAN GREEK ORTHODOX CHURCH v. TOWNSHIP OF ATIKOKAN

*April 20th, 1960. P.F.M. 8788

Assessment—Appeal from decision of the County Judge—Jurisdiction of board affirmed by Court of Appeal. Sec. 80, The Assessment Act (R.S.O. 1950, c. 24), as amended.

C. J. WATT, for the appellant.

This was in regard to an appeal from a decision of His Honour P. J. McAndrew, Judge of the District Court of the District of Rainy River, dated the 2nd day of April, 1959 with respect to the assessment made in 1958 for taxation in 1959 of the property known and described as Lots 10, 11, 12 and 22, Plan S.M. 182 of the Township of Atikokan and known as St. Michael's Church.

On appeal taken to the Court of Appeal from the order of this board made July 6, 1959 in which this board found it had no jurisdiction and declined accordingly to hear the appeal, the Court of Appeal made an order dated November 10, 1959 setting aside this order of the board and ordering that the matter be remitted to the board, "to hear evidence and to decide such question of fact as may be in issue in respect of the use of the property". A hearing was subsequently arranged.

The township indicated its consent to the board finding as a fact for the year 1958, "that this church was a church and not a public hall". On the further evidence of the appellants, the board found and decided that the property in question was used as a church during the year 1958 and particularly at the date of the return of the roll in that year.

Appeal allowed.

*Present, W. Greenwood, Esq., B.Sc., and V. S. Milburn, Esq.

Re THE CITY OF TORONTO

*April 22nd, 1960. P.F.M. 10180, 10198

Restricted area—Amendment to official general use plan and by-law to permit extension of commercial operation in residential area—Single claim not sufficient to justify area change. Sections 27a and 29 of The Planning Act, 1955 (O.S. 1955, c. 61).

P. M. Brooks, for City of Toronto.

M. G. Singer, for Morris Chaplick, owner of 1087 Dundas St. West.

M. C. Purvis, Q.C., for residents opposing.

This was an application of the City of Toronto for approval of amendment No. 77 to the Official General Use Plan of the City, a reference to the board by the Minister of Planning and Development and an application by the City for approval of its restricted area by-law 20871.

The foregoing amendments apply to the same lands near the corner of Ossington Ave. and Dundas Street and would change the use classification from residential to commercial. The lands on both sides of Ossington Avenue are commercial. To the east they are residential, including the subject lands. Here are several non-conforming uses but the remainder of the block is occupied by row housing.

The owner of 1087 Dundas Street West, a chrome furniture business claimed he needed an increase in floor space from 6,000 to 10,000 square feet, for storage and display—not for actual manufacturing.

Owners and occupants of nearby residences opposed vigorously. They complained that lanes giving secondary access to their properties were often blocked by commercial vehicles—not necessarily those of the chrome furniture operation. The laundry was complained against as emitting smoke and blocking lanes. The proposed addition was not compatible with residential use and more objectionable industries might locate there.

The proposed amendments would permit (C-1 zone) retail stores, shops, garages, service shops and other uses found on principal streets. This category is more restrictive than the C-2

*Present, D. Jamieson, Esq., and V. S. Milburn, Esq.

category placed on both sides of Ossington Avenue south of Rolyat Street, which permits certain manufacturing operations. As previously noted there was commercial zoning along both sides of Ossington Avenue, slightly to the west. To the north, east and south the zoning for a considerable distance was residential.

No owner of land appeared in support of the proposed change except Mr. Chaplick (chrome furniture). All the others present were opposed.

There did not appear to be any reason for making this change other than the desire of one owner to enlarge his business premises. Most of the land in the area—except the commercially zoned lands on Ossington Avenue—were in residential use.

Application dismissed.

TERRACE INVESTMENTS LIMITED v. THE CITY OF OTTAWA

*April 29th, 1960. P.F.M. 10046

Restricted area—Amendment appeal—Changed conditions and development favour amendment to earlier by-law. Sec. 27a (19), The Planning Act, 1955.

G. E. Beament, Q.C., for Terrace Investments Limited.

D. Hambling, for City of Ottawa.

Mrs. M. Nicholson, for several persons opposed.

This was an application of Terrace Investments Limited for an order directing an amendment to schedule 129 of by-law 106-59 of the Corporation of the City of Ottawa to restrict the use of block "F" on registered plan 605 fronting on Botsford Street to a depth of 110 feet to single family dwellings and to permit the erection and use of 4 apartment buildings of 30 units each on the remainder of the said block "F".

Block "F" is a triangular parcel on Coronation Road, between Botsford Street and Walker Road. The manner in which it was to be used had been approved by the Minister of Planning and Development. This was part of a land assembly scheme started in 1951, and developed in stages until the area had become almost completely built up, largely with single family residences—except

*Present, R. L. Kennedy, Esq., Vice-Chairman, and V. S. Milburn, Esq.

blocks "D" and "E". Block "D" had 4 six-suite apartment buildings. Block "E"—about 800 feet west of block "F"—had 10 apartment buildings.

To the north of this plan the lands were zoned for C-4 use occupied largely by warehouses. To the east across Russell Road the land was zoned M-1 for industrial use. To the south another subdivision had been developed under R-6 zoning.

The existing by-law permitted, in block "F", apartment houses of not more than 8 dwelling units on a lot of 12,000 square feet or more, and limited to 30 feet in height. It was claimed that under this by-law 18 buildings containing a total of 144 dwelling units could be constructed.

Terrace Investments Limited had secured an option on block "F" from C.M.H.C. and had prepared a siting plan which had been approved by that corporation. This plan proposed the construction of 4 buildings only, with parking and landscaped areas. Total coverage of buildings, 27,720 square feet. The amendment requested was to permit a height of 38 ft. instead of 30 ft. and an increase in dwelling units from 8 to 30. The vacant frontage on Botsford Street would be developed as single family dwellings.

When this matter came before the Technical Advisory Committee there were already two other proposals there, for restricting use of block "F". One was for restriction to park or playground use, the other to single family and institutional uses.

Apparently the committee considered the subject application a reasonable one, and commented that there were already too many small apartment buildings being constructed. However it was reluctant to make a decision, recommending against all three applications, but suggesting that they be referred to the Municipal Board. This suggestion was adopted by both the Ottawa Planning Area Board and the City Council.

Some residents supported the application on the ground that the proposed buildings and layout were more desirable. Others opposed the construction of apartment buildings as lowering neighbourhood values. Practically all shades of opinion were expressed.

Tending to support the application the public school inspector reported ability to take care of increased school attendance, while the city assessor doubted any depreciation of values wherever apartments had been erected. Similarly park land was considered

adequate, while neither the Planning Board nor the City Council made any move to restrict the land to park use. Both Coronation Road and Russell Road were of such importance that the area adjacent to their intersection could hardly be considered desirable for single family dwellings.

While the construction of apartment buildings at the already permitted ratio of one to each 12,000 sq ft. of land might reduce the value of adjacent properties the board doubted that construction of four properly spaced buildings with proper parking space and a 40 ft. landscaped area along the two inside boundaries would have any such effect. Besides, the buildings facing Coronation Road would have to be approved by the Building Appearance Committee. The board felt that the appeal should be allowed providing that an agreement is made with the city respecting a landscaped strip 40 ft. wide along the south and west boundaries of the lands appurtenant to the apartment buildings, to be planted and maintained as open space.

Appeal allowed.

Re CITY OF LONDON ANNEXATION

*May 9th, 1960. P.F.M. 7054

Annexation—Township lands to city—Complicated by unusual degree of suburban growth—Position of the townships—After-effects of annexation—Position of farm lands—Reorganization of civic government—Sec. 14 of The Municipal Act (R.S.O. 1950, c. 243), as amended.

H. R. Davidson, Q.C., for the City of London.

E. S. Livermore, Q.C., for the County of Middlesex and the Township of North Dorchester.

D. G. E. Thompson, for the Township of West Nissouri and the Public School Board of the Township School Area of West Nissouri.

G. L. Mitchell, Q.C., for the Township of London.

E. M. Shortt, for the Township of Westminster.

P. V. V. Betts, for Brian R. B. McGee—an owner of lands in the Township of London.

John W. Cram, for Riverside Construction Co. Limited and D. J. Brant Co. Limited, owners of certain lands.

*Present, J. A. Kennedy, Q.C., Chairman; David Jamieson, Esq., and A. L. McCrae, Esq.

E. A. REID, for the Veterans' Land Act and for the Public School Board of School Section 23, Township of Westminster.

H. A. GREGORY, for the Mountsfield Ratepayers' Association in the Township of Westminster.

M. J. GRANT, Q.C., for The Somerville Co. Limited.

This was an application of the City of London for the annexation to the city of some 60,000 acres of land, mostly from the Townships of London and Westminster but also in small areas from the Townships of West Nissouri and North Dorchester. By-law A-3300-74 filed with this board February 27, 1958.

Before a hearing could be held an Order-in-Council was passed April 3, 1958 requesting the board to enquire into and report on the municipal organization and structure in the area comprising the City of London and the four townships mentioned above. After some deliberation the board ruled that evidence at the hearing might include not only matters relevant to the subject matter of the annexation application but also any other matter related thereto and in respect of which the board was directed to enquire by the Order-in-Council, but stipulated that the facts submitted at the hearing must be established by evidence.

Numerous hearings were necessary. The present decision is on the application for annexation. The board would make a report pursuant to the Order-in-Council in due course. Many of the matters into which the board was directed to enquire are dealt with in the present decision. Accordingly it will be necessary to read this decision in connection with the board's report under the Order-in-Council when that report may be considered.

As noted above, the area applied for contained some 60,000 acres. Of this 10,000 acres had been already built up, 30,000 acres either vacant or used for agriculture but considered useable for building development, 10,000 acres comprising land covered by water, low lying lands and lands properly in green belt, also 10,000 acres within a peripheral strip not considered at the moment but ultimately slated for urban development.

The present city contains about 7,000 acres which might be said to be fully developed. Thus in an area of some 17,000 acres reside the whole population of the city and most of the suburban population of the Townships of London and Westminster, an area reasonably contiguous and forming practically a single community.

Annexation was urged by the city, based on a probable population of from 300,000 to 375,000 for this community.

The board found a large proportion of suburban development bordering on the borders of the City of London due, no doubt, to the fact that there had been no recent annexation of any size since 1912. A proposed one (1952) of 7,950 ac. was eventually withdrawn.

The present proposal would increase the city population by 50% and increase the assessment, when equalized, by 40%. The developments in the Townships of Westminster and London could have each qualified as a separate city. It is probably due largely to this fact that so many different interests were aroused and so much time spent in hearing a great number of representations. An earlier change in political boundaries in such cases would be desirable.

At the conclusion of the case for the city, the board dismissed the application insofar as it affected lands in the Townships of West Nissouri and North Dorchester as these lands were so far from the city that no present need for annexation had been shown.

Area Growth and Principles Applied

Although the hearing was conducted as an "adversary" hearing, with applicant and several respondents, nevertheless the controlling concern of the board was the greatest common good of the inhabitants and other ratepayers in the whole area affected.

Figures were produced to show the growth over several years of the City of London and of the contiguous area in both London and Westminster Townships. In 1959 these populations were 102,542, 40,802 and 24,306 respectively. This meant that between 1951 and 1959 the population of the city increased less than 10% while that of London Township trebled and that of Westminster Township doubled. Most of this population was within the areas proposed for annexation.

From a study of all aspects of the situation, it was obvious that the population of the present city and the population of the urbanized parts of these two townships bordering on the city formed a single community with common needs, common interests, common problems, facilities for municipal servicing as a unit and common social and cultural facilities and advantages.

The next consideration was whether or not it was for the

common good that this community should continue under three distinct municipal governments.

Many opinions expressed as to desirable municipal boundaries seemed based on the assumption that municipal corporations possessed certain vested interests and rights. The board believed that such a claim must be regarded only in the light of the best interests of all the ratepayers in the entire area in question—the greatest common good.

The Situation in the Township of London

While in the three municipalities being considered taken together the population increase in the past 8 years was 37.5%, the increase in the Township of London alone was 207%. Looking at it another way, of the total population increase in these three municipalities 60% was in the Township of London, a municipality with approximately 15% of the assessment. This lag in assessment was largely because of residential development there.
The ratio of debenture debt to assessment is:

City of London	6.8%
Township of London	20.6
Township of Westminster	8.9

However, in view of capital debt not yet debentured and the cost of works not yet completed the figure for the Township of London would increase substantially.

What was substantially a rural township 20 years ago had been called upon to bear the brunt of a dynamic urban expansion centred on the City of London. Early in 1959, when approving an agreement between the Township of London and the O.W.R.C. regarding construction of a sewage disposal plant at an estimated cost of $922,882.00, this board found it necessary to rule that until a safer balance could be achieved between capital debt and rateable assessment, no further capital expenditures would be approved other than small emergency ones. It was clear that the township was faced in the next two years with the need for large capital undertakings to provide essential services. Unfortunately, under the circumstances, approval would have to be refused.

The board was impressed with the efforts, over the years, of both the elected and appointed officials of the township to meet this formidable challenge but felt that until recently the township

councils had failed to come to grips with it. One example was the assessment department where improved methods were even then urgently required in order to ensure equitable distribution and collection of the municipal levy.

Evidence indicated also the inability or unwillingness of the council to control new developments within reasonable limits. For instance its official plan provided that future development would be permitted only in areas where municipal water and storm and sanitary sewer services would be available. Hardly had the plan been approved however when the council at the instigation of a subdivision promoter took steps to effect serious breaches in it, which however were finally considerably modified by the Minister of Planning and Development.

In the field of assessment the board observed that practically no effort had been made in achieving or maintaining a fair ratio between industrial-commercial and residential assessments. In fact little or no study had been made of the problem which is one of the most obvious and elementary of modern municipal financing. It was also significant that while early in the proceedings the board asked all local municipalities for a forecast of anticipated capital undertakings over a period of five years, this forecast had not been received from the Township of London up to the conclusion of the hearing, several months later.

For the reasons touched on above, the board felt that while the Township of London had made a creditable effort to accept a large share of the development attracted to the London area and to modernize its administration along urban lines, it was in a serious financial situation almost entirely because it had not the size nor the necessary resources to assimilate this very substantial new development. The board felt that the tax base of the city with its very favourable assessment ratio of industrial-commercial to residential must be made available to this suburban area in the Township of London.

The Situation in the Township of Westminster

As previously noted the extent and rate of growth in this township had been decidedly less than in the Township of London, largely due to topography. A second reason however had been, no doubt the policy of the council of Westminster in imposing stringent conditions for residential development and in being ready to

cede to the city, from time to time, areas of land to provide for residential growth to the south of the city. However with the opening of a section of Highway No. 401 some two miles south of the city there were indications that the development picture would change. It was to be noted that notwithstanding the substantial development in Westminster, its ratio of debt to assessment was still very good. In some measure this was due to an avoidance of capital expenditures where possible in favour of buying services from the city. Another interesting factor appeared to be the policy of setting aside a very large area for industrial and commercial development between the south limit of the city and Highway No. 401 and at the same time prohibiting residential development south of the Second Concession road, thus leaving it to some other municipality to provide a dormitory for the workers of Westminster Township. However if this policy cannot be maintained, development in Westminster Township will at least equal that of London Township and probably with similar financial effects.

Analysis of Governing and Essential Factors

The various factors, considerations and problems which have been discussed appeared to the board to be merely part of an overall picture to be found in the case of any urban centre experiencing rapid growth. The magnet for this development, whether industrial, commercial or residential, is the urban core. Since each part is so dependent on the others then problems of planning, zoning, public works, roads and every municipal service are truly the common problems of every inhabitant and every ratepayer in the whole urban area. Where therefore one municipality might experience an undue share of residential development and another gain a disproportionate share of industrial or commercial assessment then it appeared to the board that in the interest of all the inhabitants several areas should be brought under a single municipal jurisdiction.

Planning and Area Problems

In 1951 the London and Suburban Planning Area set to cover all the city of London and parts of the Townships of Westminster, London and West Nissouri. These parts of London and

Westminster Townships were in each case larger than those sought for annexation. The planning board for this area submitted a plan of basic land use to the several municipal councils having jurisdiction in the planning area. While it appeared to find favour with the council of the City, no action was ever taken by the councils of London or of Westminster Townships. Apparently the two townships became convinced that the London and Suburban Planning Board operated largely in the interests of the City of London. Finally in 1955 the Minister of Planning and Development designated each of these two townships as a local planning area and placed effective control with respect to approval of plans of subdivision in the hands of the two local planning boards.

Another manifestation of the problems resulting from the growth of this area under different jurisdictions was the appointment of a joint committee on area development comprising representatives of the city and these two townships which met from time to time during 1956 but soon expired.

Mention has been made of services and facilities provided by the city for the built-up areas in these two townships. Apparently adequate and satisfactory fire service was provided there at less than the cost to ratepayers in the city. Sewage service also was said to be provided at less than cost. On the other hand water was sold outside of the city at an increase over the rates charged in the city. While the University of Western Ontario benefited the whole area in many respects, nevertheless it received its tax exemptions at the expense only of the ratepayers of the Township of London. It appeared that in some cases the amounts paid to the city school boards for education were less than the actual cost. Bus service was provided outside the city at the same fare as service inside. Obviously if these areas are brought under a single municipal government the cost of various services, etc., would be shared equally throughout.

Another current area problem upon which unanimity had not yet been achieved was the need for bringing a supply of water from Lake Huron a rough estimate for which was $10,500,000. Undoubtedly a proper basis for cost sharing could be arrived at far more readily under a single municipal jurisdiction.

Consideration and Analysis of Objections

The principal objections made on behalf of both townships and the main burden of every petition filed in objection were all the same—resulting increase in taxes. Considerable publicity by both sides on television all stressed that one point.

Obviously if that were the only question then the board would not consider making any change in the boundaries, but in the opinion of the board that was not the whole question. Mr. K. Grant Crawford of Queen's University gave evidence on behalf of the city. He believed that the municipalities not only could afford annexation but in fact could not afford to refuse it because of the even greater cost they would otherwise face in the future. Dr. E. G. Pleva, professor of Geography at U.W.O., called by the Township of London, suggested as a preferable change, the establishment throughout the County of Middlesex of a unitary system of local government. The second preference was the establishment of a "junior county" comprising the city and the Townships of London and Westminster, with a unitary local government in this "junior county". The third was the annexation along the lines applied for, which he believed preferable to the status quo. A Mr. Deacon, professional planning consultant also called by the Township of London, recognized that there was indeed a problem but did not think annexation to be the answer.

The board found that annexation would be followed by increased cost to the ratepayers in the present city and in the areas annexed, due principally to:

1. Expenditures to raise the standard of services in the annexed areas to approximately the city level.
2. Loss in grants or subsidies payable upon expenditures in the annexed areas, due to reduction of level of payments when city status reached.

Evidence indicated that the suburban areas were receiving services from the city at less than cost, viz: fire protection and sewage disposal. Also, they appeared to be enjoying parks, libraries, hospitals, etc. provided by the city without paying a full share of the cost. On the other hand it appeared that these suburban areas were paying more for water and electricity than if in the city. Such inequities would of course disappear on annexation. Further it is not likely that a council would impose

an undue burden on its own ratepayers and would only incur such new expenditures as could be financed by a reasonable tax rate.

Regarding loss in grants, a change has recently been made in government regulations providing for a continuation for five years after annexation and then a gradual reduction instead of a sudden drop. This improves the financial condition of the township areas after annexation over what is was estimated at the hearing. Even though it is impossible to predict changes in grant structures over a period of years the board felt that the development of an enlarged city over a period of five to ten years would certainly be of a size to dwarf in importance any incidental loss of subsidy.

There is another important aspect to provincial grants and subsidies. These come, of course, from money which belongs to all the people of Ontario—to the ratepayers of the City of London and to the ratepayers in these suburban areas in equal shares. Now each of these areas are really urban areas; each is as much a city in everything but size and name as the City of London. But because they have a different status in name, moneys which really belong in equal shares to city and suburban residents are divided in grants with a larger share to the suburban ratepayers. The board considered it unfair to refuse an annexation which is otherwise justified and for the common good, merely to perpetuate this unequal division of grant moneys.

Effect on Remaining Townships and on County

Consideration was given by the board to the effect of an annexation on the remaining parts of each township and on the county rate because of substantial urban assessments being transferred to the city and the benefit lost to either the remaining rural parts of the townships or the local municipalities in the county.

Such an effect from an annexation had been foreseen by the Legislature. Section 14, subsections 10(i) and 10(j) provides for compensating grants to be made to the remaining townships where the assessment of such is reduced by not less than 15% and for such grants to be made also to a county when its assessment is similarly reduced. It would appear from the legislation that the Legislature intended these grants to be available during the period of transition. The board did not feel it proper to attempt to determine in a

particular case whether the legislation was adequate to provide fair and just compensation.

Large Capital Expenditures Required in City

Very strong arguments were advanced by the respondent municipalities based on the apparent need of the present city for costly capital undertakings particularly a large sewer program and major improvement of arterial roads. The city denied seeking the annexation in order to obtain new assessments for new undertakings. Such a result should not and need not follow. The board intended in its forthcoming order to provide for ward representation on the city council. Ward representations on the council would be able to prevent their districts being imposed upon. When considering applications for approval of expenditures in the future under section 67 of *The Ontario Municipal Board Act,* the board could be reminded of this decision in support of arguments against any unwarranted imposition on the new areas of rates to pay for the debts and needs of the old.

Consideration of the Wishes of those Affected

As previously noted the overwhelming voice from the townships was against annexation. There was no opposition from ratepayers of the City. While the board may require that the by-law authorizing the annexation application shall receive the assent of the electors of the applicant municipality, there is no similar provision for a vote in areas sought to be annexed. Notwithstanding this, the board believed that the wishes of all concerned should be considered. From the wording of subsection (4) of section 14 of *The Municipal Act* it seemed to the board that its clear duty was to hear all sides and to decide what was in the interest of the area as a whole.

As already noted, the common theme of every objection to the annexation was increased taxes. The board found that the opinion given by Mr. Crawford to the effect that any increase in taxes resulting from annexation at this time would be less than the cost of an eventual merger later, if the present divided municipal jurisdiction is allowed to continue meantime in the face of this dynamic development, was a sound one and warranted in the circumstances. It should be remembered that any increase in taxes would merely be the result of bringing into uniformity assessments and levies

throughout this large urban area. It should be noted also that even in the face of an overwhelming belief that the annexation would raise taxes a number of township ratepayers still favoured it, apparently convinced that the townships would find it difficult to provide the services for development which are considered inevitable and imminent.

In all the circumstances the board was of the opinion that the objections did not outweigh the grounds established in favour of annexation. The proper development of the whole area required that it should be planned, controlled and administered under one local government. This should foster healthy development of land use, arterial highways and public works as to ensure a sound and solvent administration.

Federation of Agriculture

A brief was filed on behalf of this organization substantially opposed to any annexation. Besides the reasons already given there was in it the hitherto unvoiced opposition of the farmers. These objected to having their farms placed under city local government in which the whole set-up is designed and intended for urban administration rather than rural and where taxes are bound to rise through the imposition on farm lands of general rates levied for urban services and not required in rural areas. It was contended that section 33(2a) and section 35 of *The Assessment Act* were not adequate to alleviate such a situation. The board believed that farm lands should not be placed under an urban government unless they would become urbanized in the near future, unless it was to prevent the undesirable practice of "leap frogging". In drawing the lines of annexation the board endeavoured to keep these principles in mind. No farm land should be included except those within the area of present or early urban development. These owners would not object as they would likely be soon selling their land for subdivision.

Conclusion

For the foregoing reasons the board decided that the lands referred to in schedule "A" to the original decision be annexed out of the Township of London to the City of London and that the lands referred to in schedule "B" to the original decision be

annexed out of the Township of Westminster to the City of London. The effective day was to be January 1, 1961.

In reducing somewhat the area originally asked for by the City the board was anxious not to over-extend into farm areas the area where development might be expected to take place within a reasonable time. The board believed that by methods it would recommend orderly growth could be achieved and a recurrence could be avoided of the "balkanization" which has made existing problems almost impossible of solution.

The order, when issued, would provide for an election for the enlarged city of a new council and new local boards. The mayor would be elected at large. Members of council would be elected by wards which would be delineated. Representation on local boards, the need for a Board of Control and other questions in respect of which this board had power to make provision might be spoken to after expiry of the statutory period and before issue of the order.

Application granted in part.

Re THE CITY OF PORT ARTHUR

*May 16th, 1960. P.F.M. 10450

Restricted area—Approval of by-law—Choice of improving or merely tolerating conditions due to non-conforming uses. Sec. 27a, The Planning Act, 1955.

D. V. Gable, for the City of Port Arthur.

This was an application of the City of Port Arthur for approval of its restricted area by-law 4493. This by-law contained four sections, but no opposition developed except to section 3.

Section 3 permitted an off-street parking lot on land acquired by an 80-year-old brewery adjoining lands it already owned. A few years ago a retail store was opened in the brewery building. A narrow strip in front of the building was used for customer parking but this might be part of the street allowance. An employees' parking lot was situated to the west of the brewery buildings. The brewery, retail store and parking were all non-conforming uses as these lands were in a residential use zone.

*Present, D. Jamieson, Esq. Report adopted by R. L. Kennedy, Esq., Vice-Chairman, and W. Greenwood, Esq., B.Sc.

The brewery explained that a modern parking lot would be constructed and pointed out that the L.C.B.O. required these retail outlets to be on brewery property or on adjacent property owned by the brewery. Proper parking was an essential part of the retail operation.

Residents objected on the grounds that expensive homes in the area would be reduced in value. One strong objection was to likelihood of increased traffic on Algoma Street on which this objector had already counted 700 vehicles per hour.

Since the operations of the brewery as non-conforming uses would continue whether the by-law was approved or not, it seemed preferable to approve the by-law and thus permit a parking in a proper lot instead of along the margin of a heavily travelled street.

Application approved.

NAPOLI INVESTMENTS v. THE TOWNSHIP OF NORTH YORK

*May 20th, 1960. P.F.M. 10057

Restricted area—Application to force change in by-law—discretion of elected representatives must be respected. Sec. 27a (19), The Planning Act, 1955.

E. A. Goodman, Q.C., for Napoli Investments Limited.
W. S. Rogers, for Township of North York.
J. A. Hoolihan, for Oakdale Heights Ratepayers Ass'n.

This was an application by Napoli Investments Limited for an order directing an amendment to by-law 7625 to change the zoning of all of lot 2, plan 3621 from RM5 to RM6 for the erection of a limited dividend low rental housing.

The area involved was six acres on the south side of Sheppard Avenue east of Jane Street from RM5 which permits semi-detached residences to RM6 which would permit the building of apartments.

The property had been purchased by the applicant in 1959 for the purpose of building low income rental apartments. The building coverage of the land would be about 18% and the project would have had a population density equal to that permitted in RM5 rather than RM6 zoning. It was stated that a nearby school could service the project. If later, two additional rooms were

*Present, W. Greenwood, Esq., B.Sc., and V. S. Milburn, Esq.

required the applicant offered to provide an additional one-third acre for this purpose. The applicant had discussed the project in detail with the planning office and requested a change in zoning. It was pointed out that properties to the north were zoned commercial and an application was being considered to rezone the property immediately west to commercial.

However, the township's planning staff had not only discussed the matter with the applicant but had had correspondence with the Metropolitan Planning Board and the School Board. In planning this area and establishing the Black Creek trunk sewer the Metro Planning Board had not considered apartments here. If these were permitted a lesser density would be required elsewhere so as not to overload the trunk sewer. The School Board felt that the school could not accommodate the pupils if the area was zoned RM6. Also, the present 18-room school was more economical to administer than one with 20 rooms which might be required if apartments were permitted. So, the Planning Board did not recommend rezoning to RM6 and the council took no action.

The Dale Heights Ratepayers' Association pointed out that their members had purchased homes in this area on the understanding that there would be no apartments and the zoning would be RM5. The change would bring increasing traffic, increased density, an unsightly 7-storey apartment building besides which there was no public transportation there.

In considering the problem, the board pointed out the principles which had governed it on applications under sec. 27a (19) of *The Planning Act* as set out in a number of decisions, viz:

> It should not interfere with the discretion given to elected representatives unless it can be clearly shown that such discretion (1) has not been used for the common good (2) that it creates undue hardship (3) that they have acted on incorrect information or advice or (4) otherwise improperly.

In this case it had not been so shown. The applicant purchased the property in the full knowledge that it was zoned RM5 and there was no evidence that there was at any time any indication from either the Planning Board or the council that he could expect a change in zoning.

Application dismissed.

RE MERRITTON ANNEXATION

*May 25th, 1960. P.F.M. 3974

Annexation—Township lands to town—Local interests part of larger considerations—problems common to whole area—Sec. 14 of The Municipal Act (R.S.O. 1950, c. 243), as amended.

S. S. MACINNES, Q.C., and D. G. HUMPHRIES, for the Town of Merritton.

W. S. MARTIN, Q.C., for the Township of Niagara.

H. E. HARRIS, Q.C., for the Township of Grantham and Grantham Township School Area Board.

H. R. YOUNG, Q.C., for the City of St. Catharines.

H. M. ROGERS, Q.C., for the County of Lincoln.

This was an application by the Town of Merriton for annexation to the town of some 850 acres of land out of the Township of Grantham under authority of by-law 949 of November 24, 1958. An earlier application (1955) to annex about 400 acres had been delayed to permit the City of St. Catharines to make certain studies regarding the municipal set-up and organization in a large area comprising these three municipalities and certain other territory. Apparently in November, 1958 not wishing to wait any longer the council of the Town of Merriton passed by-law 949 and pressed for the annexation of 850 acres.

In the preceding two years St. Catharines had obtained a report on which no action had been taken and then when section 48a of *The Ontario Municipal Board Act* was enacted in 1958 asked that an Order-in-Council be passed directing this board to make an enquiry into the establishment, organization and methods of operation of municipalities in the St. Catharines area. For some time both the City and the Township of Grantham had been contending that there were major problems confronting this whole area so far-reaching that they could not be even partly solved by piecemeal annexations.

Then, in November, 1958, St. Catharines and Grantham jointly commissioned engineering and planning consultants and auditors to report on the best solution for the problems of the area. About this

*Present, L. R. Cumming, Q.C., Chairman Ad Hoc, and V. S. Milburn, Esq.

time also the city first passed a by-law for annexation of certain township lands and just before this hearing it gave first and second readings to a by-law asking for outright amalgamation of St. Catharines and Grantham.

When the board gave an appointment for the hearing of the Merritton application, St. Catharines and Grantham moved in advance of the hearing for a postponement claiming that the board would not be able on this application to deal with the municipal problems facing the larger area and that the matter should be allowed to stand pending completion of the studies mentioned above. The board dismissed this motion as also a similar one made later at the opening of the hearing.

The Town of Merriton established that there were in the town no further lands available and suitable as sites for new industry and that land available for residential development would be so used within two or three years. Of the 850 acres sought, about 400 acres were intended for industrial development. A considerable portion of the balance was already developed for residential use and accommodated some 2,600 persons, most of whom appeared to favour the annexation.

The town had a very favourable balance of industrial and commercial assessment compared to residential—a ratio of about 60% to 40%. Taxes there were substantially lower than in Grantham Township. Services in Merritton were provided out of the general rate whereas in the Township they were installed under *The Local Improvement Act.* It appeared that ratepayers in the subject area of Grantham expected to benefit through having their local improvement charges paid out of the general rate and also from the lower general rate of Merritton.

Grantham opposed the application on the grounds that it needed the 400 acres of industrial area to maintain a safe balance between industrial and residential assessments as the Township develops. The Township and the City of St. Catharines both contended that it was impossible to decide on boundary changes without an area study. At the conclusion of the hearing the board reserved its decision. The applicant requested an early one while the township and the city urged a delay until the board might hear and deal with the problems of the whole area.

Aside from the problems ordinarily met with there existed in this case a special problem, that of cleaning up the old Welland

Canal. Each of these municipalities, and others, were dumping raw sewage into the water of this canal, creating a problem of pollution which had engaged the attention of federal, provincial and municipal authorities for years. A start had been made through an agreement by these municipalities with the Government of Canada to provide for the filling of substantial parts of the old canal, a work making necessary the construction of interceptor sewers and enlargement of sewage disposal facilities at Port Weller. The city had constructed a large part of the Port Weller sewer of a size sufficient to receive all the anticipated sanitary flow and a sewage disposal plant at Port Weller which would have to be enlarged. These municipalities had not been able to agree on a basis for sharing the cost of these further capital works and consequently despite the urgency even the required engineering had not yet been done.

Meanwhile, since the hearing of this application, the report ordered by St. Catharines and Grantham had been completed as a result of which each of these asked for outright amalgamation of St. Catharines, Merritton, Port Dalhousie and Grantham. The hearing on this application proceeded up to the point where all the evidence in support had been heard. Then Merritton took the position that the town could hardly proceed until its application for annexation had been first decided, otherwise it would have to present two submissions based on the two obvious alternatives. In view of the town's insistence the board agreed to render its decision.

On all the evidence the board was satisfied that the problems in this area were common to the several municipalities and that it would be in the best interests of all concerned if dealt with on that basis. Those interests would be best served if the amalgamation application by St. Catharines and Grantham were allowed to proceed unhampered. The application by the Town of Merritton was therefore dismissed.

Application dismissed.

Re THE TOWN OF NIAGARA

*May 26th, 1960. P.F.M. 5902

Restricted area—Approval of by-law—Previous temporary approvals provided test period—Sec. 27a, The Planning Act, 1955.

H. W. Edmondstone, for the Town of Niagara.

This was an application for final approval of restricted area by-law 1423, passed April 2, 1957 and which had on several occasions received temporary approval. There was no opposition.

In explanation it was stated that the municipality was acutely conscious of the fact that it must regulate construction of dwellings so that it would be as closely as possible to the point where the assessment would ensure adequate tax return. The town felt that industrial assessment was too low and was making efforts to improve it.

The by-law provided that one-storey dwellings should have a land coverage of at least 1,000 sq. ft. for the habitable area and two-storey dwellings 1,500 sq. ft. of floor space.

Since apparently the by-law had been quite successful under temporary approval the board felt that it should receive final approval.

Application approved.

*Present, D. Jamieson, Esq. Report adopted by R. L. Kennedy, Esq., Vice-Chairman, and A. L. McCrae, Esq.

C. W. McEWEN LIMITED AND THE CITY OF PORT ARTHUR

*June 2nd, 1960. P.F.M. 10344

Planning—Appeal from committee of adjustment—Extension of buildings already constituting a non-conforming use not permitted. Sec. 14, The Ontario Municipal Board Act (R.S.O. 1950, c. 262)—Sec. 18, The Planning Act, 1955 (O.S. 1955, c. 61), as amended.

This was an appeal by C. W. McEwen Limited from a decision of the committee of adjustment of the City of Port Arthur refusing application for variance from provisions of by-law 2877 to permit enlargement of a gasoline service station at the intersection of Cameron and St. Paul Streets.

In 1953 a "neighbourhood" service station was erected on the land and it consisted of one maintenance bay and an office. It was claimed that one-bay stations had not proved satisfactory so it was desired to extend the building to provide a second bay.

The committee of adjustment stated the policy of the city was to prohibit gasoline service stations on certain streets—hence the by-law. This service station was in a prohibited area so was non-conforming in this respect.

Since the erection of this service station by-law regulations now require that a service station have:

(1) lot area of at least 15,000 sq. ft.; (2) frontage of 150 feet;
(3) all entrances at least 20 feet from street intersections;
(4) gas pumps at least 30 feet from any entrance.

Regarding the subject property—(1) it had an area of only 3,744 sq. ft.; (2) was a corner lot 52 ft. by 72 ft.; (3) a suitable entrance could be arranged; (4) no acceptable pump location.

The proposed extension would reduce off-street parking and probably increase curb parking and traffic congestion.

In view of the fact that with the enlargement of the buildings the use would continue to be in contravention of a number of restrictions and would, indeed, tend to aggravate conditions which the city was seeking to improve, the board felt that the appeal should not be allowed.

Appeal dismissed.

*Present, D. Jamieson, Esq. Report adopted by R. L. Kennedy, Esq., Vice-Chairman, and V. S. Milburn, Esq.

Re THE TOWNSHIP OF MALDEN

*June 6th, 1960. P.F.M. 9583, 9584

Restricted area—Two incompatible adjoining uses—Original by-law would practically abolish existing industry—Suggested amendment would establish monopoly. Sec. 27a of The Planning Act, 1955.

Wm. A. Willson, for Township of Malden.

R. D. Thrasher, A. H. Stephenson, Q.C., for Amherst Quarries Limited.

This was an application of the Township of Malden for approval of its restricted area by-laws 1404 and 1405 which prohibit making or establishing any new quarries in a certain defined area of 1,600 acres and the carrying on of many operations such as manufacture, processing, crushing or storing of rock, cement, etc., in the same area.

There was already a quarry in the area and this was restricted to dimensions of 500 ft. by 1,000 ft., approximately its existing area. It could, therefore, continue within these dimensions to any practical depth. However, it was estimated that such a depth would be reached in about six months. The result of the by-law would, therefore, be that in the near future there would be no quarrying operations in the area.

At the site of the quarry there had once been a quarry which had been abandoned some years ago. During the interval between the closing of the old quarry and the opening of the present one in June, 1959 a number of residences had been erected from the east limit of the Town of Amherstburg to within approximately 1,000 ft. of the quarry. A watermain had been recently extended to serve this area, which was a typical ribbon development.

The quarry owners strenuously opposed the by-law. A number of area residents vigorously supported it, complaining about noise, dust and blasting effects. They also claimed that the quarry operations would devaluate homes in the neighbourhood.

It appeared that the present president of the company had acquired the site of the old quarry, about 19 acres in June, 1956. In March, 1959, a further 65 acres were acquired. In April, 1959, the present owner, Amherst Quarries Limited, was incorporated,

*Present, W. Greenwood, Esq., B.Sc. Report adopted by R. L. Kennedy, Esq., Vice-Chairman, and David Jamieson, Esq.

taking over these two parcels and shortly acquiring a further parcel of about 95 acres. The three adjoin.

Up to this time there had been no zoning on any part of the acquired lands, nor in the vicinity, so that the quarry operation did not contravene any township by-law. It appeared that the proposed operation had been discussed with some of the township authorities, so that it seemed most unlikely that the intention to reopen this quarry could have been beyond the knowledge of council or residents of the area.

The by-laws were not passed until September 21, 1959 following requests from property owners in the area.

At the time of the hearing, and due to lack of adequate zoning, there were two incompatible adjoining uses, both of which had a right to be where they were. However, if the by-laws were approved one of these would disappear in the near future.

Following the first hearing of October 27, 1959 and a reserving of decision the town amended the by-laws. By-law 1417 amended by-law 1405 so that the land exempted from its provisions became the parcel of land then owned by the company, approximately 160 acres, in place of the parcel of 500 ft. x 1,000 ft. (about 11.5 acres) previously exempted. By-law 1416 amended by-law 1404 so that the lands owned by Amherst Quarries Limited were exempt where previously no exemption had been allowed.

Public opinion had apparently become reversed. The effect of the decision would determine whether industrial or residential use would prevail, both legal when established but nevertheless incompatible.

Proponents of the industrial use claimed it would be of great benefit taxwise to the whole township and would increase in value as extensions were made. On behalf of the residential use it was maintained that this use was in the direction of logical expansion.

Actually, as is well known, such a ribbon residential development is a detriment to a rural municipality and is discouraged wherever possible. The growth of Amherstburg, averaging an increase of some 95 persons per year in the past 10 years, has not been such as to warrant the expectation that it would likely expand this far for a great many years.

The evidence indicated that the area to which by-law 1405 applies (the 160-acre tract) is the only one in the township where stone could likely be quarried due to the depth of overburden. It

also indicated that stone of the quality obtained here was not plentiful.

The board did not believe that the possible damage to the residential development in this area, due to the operation of this quarry, would be so great as to justify approval of by-laws intended to put it out of operation. On the other hand, there seemed to be no justification (and perhaps no legal grounds) for granting a monopoly operation to one company over such a large area, and which is the only area in the township where it is feasible to establish quarries. It was the opinion of the board that the whole question of zoning in this township required detailed and careful study with a view to establishing a reasonable pattern for future development. Incidentally refusal to approve of the original by-laws 1405 and 1404 automatically nullifies their amended forms, by-laws 1417 and 1416.

Application dismissed.

SUNNYBROOK INVESTMENTS LIMITED v. THE TOWN OF AURORA

*June 6th, 1960. P.F.M. 10049

Assessment—Appeal from a decision of the County Judge—Progressive development of subdivision hampered by assessment—All valuation factors must be given consideration—Sec. 124(1), The Assessment Act (R.S.O. 1950, c. 24), as amended.

This was an appeal from a decision of His Honour Judge Shea, Judge of the County Court of the County of York, dated December 29, 1959, with respect to the assessment made in 1959 for taxation in 1960 of the lands known and described as lots 1 to 70, inclusive, and lots 208 to 218, inclusive, according to registered plan 517 for the Town of Aurora.

The 81 lots on which this appeal was taken constituted the westerly part of a subdivision developed by the appellant which contained a total of 218 lots and four blocks. For purposes of development the subdivision had been divided into two stages—stage 1 consisting of the easterly portion of 137 lots and stage 2 comprising the 81 lots under appeal.

*Present, W. Greenwood, Esq., B.Sc., and D. Jamieson, Esq.

The appellant relied in part on clause 9(f) of the subdivision agreement dated June, 1958, viz:

> 9(f) "THE OWNER COVENANTS AND AGREES to construct or cause to be constructed, from time to time, Commercial and/or Industrial building or buildings within the limits of the Town of Aurora, which building or buildings, with the land upon which they are constructed, shall have a total assessed value equal to the difference between the total assessed value of each dwelling unit constructed on each residential lot (including the lot) on the said draft Plan of Subdivision and the sum of *Seven Thousand* ($7,000.00) *Dollars*. The site upon which a commercial or industrial building is to be constructed must be approved by the Town and the building must comply with the provisions of any By-law appertaining thereto. It is understood and agreed that the Owner shall be entitled to the industrial assessment of the real property, only, of the Bank of Nova Scotia building, corner of Yonge and Mosley Streets, Aurora, towards the total industrial and/or commercial assessment required by it under this paragraph."

The agreement provided that stage two of the development could proceed only when the conditions of section 9(f) had been met.

Appellant claimed he had made diligent effort to attract industry and commercial development but for reasons beyond his control, without success. Consequently he could not get building permits for any building within stage 2, even though all services were completed and so could sell none of these lots. It was expected that the assessment of houses to be erected there would be with the lot, about $4,000, thus leaving a total requirement of about $810,000 in industrial or commercial assessment to be provided. This, he contended, was impossible under existing conditions.

The assessor, following the practice of his predecessor, used a rate of $14 per foot frontage for a lot 150 ft. deep, with standard alterations for greater or lesser depths but regardless of whether the lot was built upon, vacant, serviced or unserviced—or where located. He would not necessarily have known of the agreement nor did he know anything about services.

From the evidence submitted the board found that proper consideration had not been given to all the factors set out in section 33 of *The Assessment Act*. No evidence was adduced to show values in comparison to sale value except in the case of built-upon lots,

where the assessment appeared to be roughly one-third of the sale value. The board found that a basic rate of $12 per foot frontage would be fair and equitable. This rate would be for a standard lot 150 feet deep with an adjustment similar to those made for the $14 rate. This was to apply to all lots except lot 1, the appeal on which had been withdrawn.

RE DOWLING TOWNSHIP ANNEXATION

*June 6th, 1960. P.F.M. 9741

Annexation—Lands to incorporated township from unorganized one—Peculiar geographic location important factor—Sec. 14 of The Municipal Act (R.S.O. 1950, c. 243), as amended.

W. A. INCH, for the Corporation of the Township of Dowling.

W. A. STEVENS, for some of the ratepayers in the Township of Fairbank.

This was an application of the Township of Dowling for the annexation to it of part of the unorganized Township of Fairbank, being that part of Fairbank lying north and east of the Vermillion River and Vermillion Lake and abutting the southerly boundary of Dowling.

There being no bridges across the river in this section, the subject area was isolated from the rest of Fairbank except for casual communication across the river or lake. Forming part of the Dowling School Area No. 1, it was assessed for school purposes on the same basis as Dowling. The elementary school was located in Dowling. High school students attend the Chelmsford Valley District High School at Chelsmford. Fairbank Township ratepayers were paying three separate taxes, viz: school, statute labour and government land. The clerk-treasurer believed that annexation would reduce this aggregate somewhat. Dowling Township assessment was $580,000; that of the subject area, $70,000. Dowling Township had a debenture debt of $170,000 for school purposes.

Residents of the subject area were served by roads leading from Dowling Township over a recently-built bridge, the roads being serviced by Dowling under an agreement with Fairbank. Both townships were within a proposed planning area awaiting govern-

*Present, W. Greenwood, Esq., B.Sc., and V. S. Milburn, Esq.

ment approval. About 75% of Fairbank Township population were summer residents; there were about 80 persons in permanent residence. Dowling Township population was 1,100. There were 10 school age children in Fairbank Township.

Dowling Township claims for annexation were: (a) since it was already servicing this area it could be done more efficiently as part of Dowling; (b) that assessment of the subject area would improve the credit rating of Dowling and; (c) its peculiar geographic location made it logically a part of Dowling.

Many residents of Fairbank Township protested the annexation, feeling that taxes would be increased with no benefit since already they were receiving the services from Dowling. They claimed that Dowling merely wished the additional assessment for credit purposes.

Being of the opinion that since Dowling was then providing many of the services to the subject area and since, because of geography the subject area lends itself to being part of the Dowling community, then the application should be approved with the effective date January 1st, 1961.

Application granted.

TOWNSHIP OF ESSA v. COUNTY OF SIMCOE

*June 10th, 1960. P.F.M. 9568

Assessment—Appeal by township from equalization of county—Township assessment roll not to be altered by county—Sec. 89 of The Assessment Act (R.S.O. 1950, c. 24), as amended—also sec. 32 and 237 of the same Act.

PETER RIDOUT, J. BOWERMAN, for the appellant.
JOHN T. WEIR, for the respondent.

This was an appeal by the Township of Essa from the equalization of the County of Simcoe of assessments for the year 1960 of municipalities within the said county, as confirmed by by-law 2568 passed June 19, 1959, on the basis of a report from the county assessor dated May 30, 1959. This appeal was with respect only to the valuation of the properties known as "permanent married quarters" at Camp Borden, in the Township of Essa.

*Present, R. L. Kennedy, Vice-Chairman, and C. F. Nunn, Esq.

Section 32 of *The Assessment Act* provides,

> "(1) Notwithstanding paragraph 1 of Section 4, the tenant of land owned by the Crown where rent of any valuable consideration is paid in respect of such land and the owner of land in which the Crown has an interest and the tenant of such land where rent or any valuable consideration is paid in respect of such land shall be assessed in respect of the land in the same way as if the land was owned or the interest of the Crown was held by any other person."

However, section 237(1) appears to provide an alternative method by which the municipality may agree to accept from the Government of Canada an amount of money in lieu of taxes which could be levied on such tenant or user, and if such an agreement is made subsection 2 provides that the municipality shall not collect any tax on or in respect of any person who uses land with respect to which such payment is made.

As a preliminary objection the respondent claimed the board to be without jurisdiction because of section 89(6) which stated that the appeal must be disposed of before the first day of January next after the appeal. The appellant maintained that this subsection was directory only and that the township should not be deprived of its rights because of failure or inability of the board to hear its appeal. The board reserved its decision and proceeded to hear the evidence. Later the objection was overruled on the grounds recorded in *Nottawasaga v. Simcoe*, 3 O.L.R., 1902, at page 169 it was held that a clause, dealing with limitation of time for decisions on appeal, was directory only and meant "that the county judge must go on with the appeal and determine it with all possible expedition, and there can be no prohibition."

There was no dispute as to what had actually taken place with respect to the valuation of "permanent married quarters" in Essa. Since 1955 the Township had been receiving a government grant in lieu of taxes under section 237 of *The Assessment Act*. There was no evidence of an agreement in writing between the parties, but to secure the grant it was necessary for the Township to make out annually an "Application for Grant, under section 5, Municipal Grants Act." The valuation placed on these "permanent married quarters" for use in the application was arrived at by the township assessor, assisted by the county assessor.

These annual valuations had never been entered on the township assessment roll and, therefore, were not included in the assessment totals reported by the township clerk to the county assessor for the purpose of county equalization. Since 1957, however, the county assessor—before making his report to the county council and before applying the adjusting factor for equalization purposes, had added to the total reported by the township clerk, the valuation of "permanent married quarters" as previously determined in consultation with the township assessor.

The whole question appeared to be whether the county assessor and the county council might add a lump sum to the local assessment of a municipality for the purpose of equalization of assessments for the whole county.

Section 87 authorizes equalization of local assessments for the purposes of the county and directs that the county "may, by by-law for the purpose of county rates, increase or decrease in any township, town or village the aggregate valuations, adding or deducting so much per cent as may, in their opinion, be necessary to produce a just relation between them . . ."

The addition to the township assessment roll made by the county assessor and the county council was not based on any percentage of the assessment roll total, but was rather an addition to the valuation in the assessment roll. In *Stamford v. Welland,* 37 O.L.R. 1916, page 155, dealing with fixed assessments, Chief Justice Mulock at page 160 stated: "the township, through its officers, is the only body in the county having the right to make assessments in the township for taxation purposes, either on behalf of the township or county, and the limitation to the assessment of the company's property fixed by the by-law means whatever assessment the township had the right to make. Its assessment constitutes the sole basis for taxation either for township or county purposes."

The decision of the board was that the county assessor and the county council had no authority to increase the total of the local assessment roll before adding so much per cent in order to arrive at an assessment equalized with the other municipalities.

Appeal allowed.

Re THE TOWN OF WHITBY

*June 15th, 1960. P.F.M. 9997

Restricted area—Amending by-law to permit commercial use of one lot in area zoned for residential purposes—Changes impending in amended land use plan would have bearing on situation. Sec. 27a of The Planning Act, 1955.

R. M. Heffer, for the Town of Whitby.

This was an application of the Town of Whitby for approval of its restricted area by-law the effect of which would be to remove one lot from its present residential classification and to place it in a commercial category. This would permit the house to be used as an office, or offices. There was sufficient land to permit the parking of at least twenty cars.

Objections voiced by several residents of the area were:

(a) Granting commercial privileges to one lot only. Some owners wanted the commercial area enlarged to include their properties.

(b) These residents stated that an amended land use plan for the town was now before the council. They asked that this change be not approved until it could be compared with the proposals contained in it.

(c) While it had been stated that this land and building would be for office use, change to the commercial category would open the way to any other use permitted in this classification, some of which might be detrimental to residential properties in the area.

There was no evidence as to the proposals for this area in the new land use plan which had not yet been approved. While it was obvious that changes in use were taking place in this area, the board was of the opinion that under these circumstances, it would not be proper to approve of a change affecting one lot only.

Approval refused.

*Present, R. L. Kennedy, Vice-Chairman, and D. Jamieson, Esq.

RE CITY OF PETERBOROUGH ANNEXATION

*June 15th, 1960. P.F.M. 10313

Annexation—Township lands to city—Need shown for school site—Previous rejection of much larger area embracing subject land not inconsistent. Sec. 14 of The Municipal Act (R.S.O. 1950, c. 243), as amended.

J. G. McCARNEY, for the Roman Catholic Separate School Board.

This was an application of the City of Peterborough for annexation to it of a part of the Township of North Monaghan, having an area of some 4.604 acres. These lands were on the north limits of the city which surrounded them on three sides. The predominant use of developed lands here appeared to be residential. A public school was located on the lands immediately to the west.

The evidence showed that since the nearest separate school was a mile and a half distant it was necessary to build one to serve the children of the area and the subject lands had been selected as the logical site. The site could be served with all the city's services supplied to other properties, particularly sewer and piped water. They could not be supplied by the township. The school authorities were prepared to begin construction immediately.

Only one property owner in the area appeared in opposition. The subject lands were part of a larger area of 128 acres whose annexation two years before had been refused. He contended that there was no vacant land in this part of the city and it was necessary to go outside for a school site. This and other similar conditions, he contended, indicated improper planning. He also claimed discrimination against private citizens who would not receive the desired municipal services, whereas the owner of the subject lands would. Furthermore, he felt it too inconsistent for the board to now approve this annexation when it had in 1958 rejected the larger area of which these lands were a part.

The board was of the opinion that the annexation of a small parcel of land for a school site being for public use only and so benefitting many residents, could not be compared to an application to annex 128 acres. In the application of 1958 there had been considerable objection by property owners in the area to be annexed. The granting of the present application would not prevent a new one for the annexation of the adjoining lands.

*Present, D. Jamieson, Esq., and C. F. Nunn, Esq.

The board felt that it had been amply demonstrated that this site was in the proper location, that the school was urgently needed and that it was desirable to have schools in a developed area served with municipal services.

Application approved.

ROSE ROSENBLATT and SORIE ROSENBLATT and THE CITY OF HAMILTON

*June 16th, 1960. P.F.M. 8708

Compensation—Expropriation and subsequent abandonment—Factors in award —Sec. 359, The Municipal Act (R.S.O. 1950, c. 243).

S. PAIKIN, Q.C., for the claimants.

K. A. ROUFF, for the respondent.

This was an application for determination of compensation to be paid by the City of Hamilton for lands expropriated and comprising one parcel of 0.815 acre. These lands were expropriated by the passing of by-law 7933, December 20, 1956, and subsequently released from expropriation by by-law 8405 of September 9, 1958.

The claimants in February, 1956 formed a partnership known as Hamilton Warehouse Terminal Co. to develop land purchased in January, 1954 comprising some 6.9 acres of which the subject property is part. The total price paid for the complete parcel was $34,000 or roughly $4,895 per acre.

At the time of the expropriation the partnership had built, on the property, 8 concrete block buildings of approximately 5,000 square feet each. In addition 2 acres had been sold to the Canal Cartage Co. for $24,000. At this time, the claimants stated they intended to build 3 more warehouses on the expropriated land but this plan had to be discontinued. At the time of the hearing the respondent contended that while the proposed use of the land was a proper one, an active market could not be found for the buildings already erected in 1958. Evidence showed that 3 of the 8 buildings were then vacant.

A. A. Takafman, an experienced realtor and appraiser, valued the subject property at $28,600 as of December 20, 1956. Factors included location with reference to the Hamilton industrial devel-

*Present, C. F. Nunn, Esq., and A. L. McCrae, Esq.

opment, proximity to the new eastern access to the city and prices of comparable properties. He considered $110 per foot frontage a fair valuation and felt that stopping up of the Beach Road would lower the value by 10% to 15%. The question of access did not come into his appraisal. He could give no reason why he did not use the sale to the Canal Cartage Co. ($12,000 per acre) nor did he concede that the subject property was much lower and swampier than the comparable properties he did use.

G. W. Disher, a civil engineer associated with making the plans for the Queen Elizabeth Highway connection with the Beach Road, testified that the subject property was some 3 to 4 feet lower than the property sold to Canal Cartage and 7 to 11 feet lower than other parts of the claimants' property. He estimated that it would cost about $5,000 to fill to the level of the adjacent properties.

J. M. Lounsbury, appraisal specialist for the respondent, considered that such an irregular piece of land should be valued on a square foot basis. At $85 per front foot or 53½¢ per square foot this would amount to $18,990, which, less $4,000 for fill, would amount to a round figure of $15,000. He mentioned several comparable properties, some of which he thought better located and had brought less than 53½¢ per sq. ft.

Barney Rosenblatt, husband of one of the claimants, and manager of the properties, gave evidence that at the time of the expropriation, 8 concrete block buildings each containing about 5,000 sq. ft. floor space had been erected on the property and it had been planned to erect 3 more on the expropriated property. Two signs in this connection had been erected. The one on the subject property had cost $403.15 but had to be removed at a loss of $303.15.

Claim was made for loss of income upon the subject property from the date of expropriation to the date of abandonment, as well as realty taxes, appraisal fee and solicitor-client fee. The claimants felt that the period of almost two years during which this land was under expropriation rendered their whole property sterile and that a normal return of 10% on their investment should be paid. It was further claimed that the property could not be developed as expeditiously as before due to a recent amendment in the respondent's highway design, since the abandonment, which makes access at Beach Road, upon which the property fronts, a dead end street through the building of a traffic circle or cloverleaf. On this point

the board felt that while the Beach Road is to be closed there was no evidence before it to indicate that it had been actually closed at the time of abandonment.

The respondent contended that there was no undue delay or injury to the property. Expropriation was necessary to avoid land speculation during the period of design and approvals. It was not until two years had elapsed that it was realized the subject property would not be necessary to their plans. Release from expropriation had been effected as quickly as possible. Had the claimants wished to avoid delay, recourse to the Ontario Municipal Board could have been initiated. During the time the claimants paid taxes on the property to which they had title and no entry had been made.

In arriving at its decision, the board considered very carefully the evidence of the two realtors and the engineer, G. W. Disher. There was no doubt in the mind of the board that the whole property was being developed on a basis of the higher lands first and that the subject lands were very low lying and swampy. It was felt that the evaluator for the claimant was too generous. He failed to consider the sale of the 2 acres to the Canal Cartage Company in 1956 as being naturally comparative. The board accepted the evaluation of the appraiser for the respondent and the square foot basis of estimating the value of an irregular piece of property. It considered the 53½¢ per foot, less $4,000 for fill, giving a net of $15,000 a just and proper evaluation, since it was supported by many comparables.

The board found that since the owners had not been able to deal with this land between the time of expropriation and the release from it, they had suffered damage measured by the loss of a fair return from the land. However, the lands as returned to the owners had not undergone any loss in value by reason of the expropriation and subsequent abandonment.

The following is a summary of the amounts the board awarded:

(a) Loss of income based on capital value of $15,000 at 10% per annum for period December 20, 1956 to September 9, 1958:		
1956 — ⅓ month	$ 41.67	
1957 — 12 months	1,500.00	
1958 — 8⅓ months	1,041.67	
		$2,583.34
(b) Appraisal fee		175.00
(c) Legal costs		350.00
(d) Damages to sign		303.30
		$3,411.64

Taxes and water rates claimed were not allowed. If the claimants received a fair return on their investment they should pay the regular overhead disbursements of such operation. Since the board considered the award to be adequate it did not allow any additional sum nor any interest to be paid prior to this date. The claimants were entitled to their costs as between party and party on the Supreme Court scale to be taxed by the Senior Taxing Officer at Toronto, and the respondent should re-imburse the board for the costs of reporting these proceedings.

Re THE TOWNSHIP OF SMITH

*June 23rd, 1960. P.F.E. 4313

Dispensation of vote—Proposed capital expenditure for new township offices—lack of agreement on essentials renders dispensing of vote of electors undesirable. Sec. 66 and 67, The Ontario Municipal Board Act (R.S.O. 1950, c. 262).

W. H. Howell, Q.C., for the Township of Smith.

This was an application of the Township of Smith for (a) authority to dispense with a vote of the electors with respect to the construction and equipment of a municipal building and the purchase of land therefor at a cost of $30,000 including architect's fees and the issue of debentures therefor, and (b) approval of the said undertaking and capital expenditure.

The Township presented the following figures:

Population	4,246
Estimated Expenditure	$ 312,143
Assessment	$7,060,557

Assessment of industrial, commercial and professional properties amounted to $587,000, and the balance divided almost equally among farm, residential and summer properties.

Township Council was holding meetings in part of a fire hall. The clerk, treasurer, assessor, sanitary inspector and building inspector each kept his records at his own home and carried on his work from there. It was claimed that the centralization of all records and proper vault storage would contribute to efficiency,

*Present, R. L. Kennedy, Vice-Chairman. Report adopted by J. R. Turnbull, Vice-Chairman, and V. S. Milburn, Esq.

offsetting the additional cost, estimated at 0.68 mills per year including building maintenance and an addition to the staff.

The reeve and one councillor were opposed chiefly because of the cost. They recommended a vote of the electors. Other opponents claimed insufficient study of the proposal, mentioning location, parking area and area for equipment storage.

A petition from 257 persons favoured the proposal while one from 422 persons asked for a vote of the electors.

The provision of a township building should receive careful consideration, taking into account the needs of the municipality, its ability to finance the expenditure and the convenience of the public.

From the evidence there did not seem to be agreement on any one of these points even in the council. In view of this situation it was felt that the board should not issue an order to dispense with the vote of the electors.

Application dismissed.

Re THE TOWNSHIP OF NORTH YORK

*June 27th, 1960. P.F.M. 8927

Restricted area—Validity of by-law questioned and upheld on appeal—This not the only consideration—Piecemeal treatment of zoning problem frowned on—Sec. 27a of The Planning Act, 1955, and sec. 96 of The Ontario Municipal Board Act (R.S.O. 1950, c. 262).

W. S. Rogers, for the Township of North York.

D. C. Vanek, and H. Wolfe, for the owners of lands affected by the by-law.

This was an application by the Township of North York for approval of its restricted area by-law 14067 to change the permitted use of one apartment building site from RM3 to RM6. The site was composed of five lots laid out on registered plan 2044. In an earlier decision, August 10, 1959 the board dismissed this application with the concluding statement that it was prepared to state a case under section 96 of *The Ontario Municipal Board Act* for the opinion of the Court of Appeal upon any question of law. This dismissal was because the board found that the by-law in question

*Present, J. A. Kennedy, Q.C., Chairman, and C. F. Nunn, Esq.

was not a valid exercise by the council of the power given it by section 27a of *The Planning Act* as amended.

The owner of the subject land, Lilliana Buildings Limited appealed on question of law. The Court of Appeal held that the by-law was a valid exercise by the council of the power given it by the statute and remitted it to this board for further consideration. The board, however, was concerned not only with the validity of the by-law under *The Planning Act,* but also whether the enactment ought to be approved having regard to all the circumstances material to the case.

The council of this township had followed the practice of changing the zoning of lands one building site at a time. The board believed that such a practice was undesirable, could be dangerous and consequently not one which the board should generally approve. Nevertheless, the board does not see that any harm can be done by approving the present by-law.

However, the board wished it to be clearly understood, that this was not to be taken as an indication that further such individual changes of zoning or spot zoning would be approved by it.

Application approved.

Re CITY OF CHATHAM

*June 29th, 1960. P.F.E. 4428

Roads—Capital expenditure—Local improvements—Undertaking without petition—Sec. 8 of The Local Improvement Act (R.S.O. 1950, c. 215)—Sec. 67 of the Ontario Municipal Board Act (R.S.O. 1950, c. 262).

D. G. Kerr, Q.C., for the City of Chatham.

R. D. Steele, Q.C., for Watson Concrete Products Limited, supporting.

Frank R. Gee, for Libby, McNeil & Libby, Canadian Leaf Tobacco Co. Ltd., British Leaf Tobacco Co. Ltd.

This was an application of the City of Chatham for authority to proceed with and raise $21,360 for construction of two pavements and the issue of debentures therefor repayable over a period not exceeding ten years.

This application was opposed by four out of a total of nine

*Present, W. Greenwood, Esq., B.Sc. Report adopted by R. L. Kennedy, Vice-Chairman, and C. F. Nunn, Esq.

owners and these four objectors represented 2,275 feet of assessable frontage out of a total of 2,670 feet. The estimated cost of the two pavements was $21,360 of which $19,020 was the property owners' share, on which the estimated annual charge per foot frontage for ten years was 83 cents.

It was claimed to be almost impossible, in spring and fall, to maintain these roads in a passable condition even after spending almost $500 in the attempt.

In the case of pavement it was expected that for the first ten years the expenditure would be almost nil. Prior to the recent annexation about 90% of the city's streets were paved. As a city by-law, under section 66 of *The Local Improvement Act,* required all such works to be constructed as local improvements, it would require a vote of the electors to depart from this principle. Pavements were usually proceeded with on petition, section 8 being only used where the work was considered essential.

The objectors contended that the construction of pavements was for the benefit of one owner, a manufacturer whose heavy loads were really causing the damage. Some industrial concerns abutting on the proposed works already had access to a paved street and so might benefit little from this project. However, all these concerns already derived more or less benefit from all the existing pavements in the city, paid for almost completely by others under the same system of assessment as the city intended to apply here. There was no evidence to show that the proposed assessment was unduly burdensome on anyone.

Application approved.

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